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ABSTRACT

This paper explores some of the implications of compulsory education for public and private schools and for home schooling. Data were derived from interviews conducted with approximately 120 education leaders in 15 states and with state officials in all states and U.S. territories. Following the introduction, the first part reviews compulsory education laws and summarizes the state survey findings. The second part describes the problems of and possible alternatives to compulsory education laws in the public school system. The impact of such laws on private schools are discussed in the third part, which describes the state regulation of private schools and court challenges to those laws. Part 4 examines the current status of home schooling, relevant state policies, and litigation. Part 5 examines political considerations involved in changing a state's compulsory education laws, some of which include the free exercise of religion, the right to choose, accountability, maintaining the society, and the possible loss of state aid to public schools. The final part provides examples from selected states that redesigned their school attendance legislation. It is recommended that states keep compulsory education requirements at a minimum and achieve reforms through a public education program that entices student participation. Nine tables are included. Appendices contain suggested legislation for compulsory education, comments on the recommended language, and citations for related readings available from the Education Commission of the States. (Contains 20 references and 15 citations of selected cases.) (LMI)

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Compulsory Education Laws

and

Their Impact on Public and Private Education — With Suggested Statutory Language

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COMPULSORY EDUCATION LAWS AND THEIR IMPACT ON PUBLIC AND PRIVATE EDUCATION

WITH SUGGESTED STATUTORY LANGUAGE

by Patricia Lines, Director
Law and Education Center
Education Commission of the States

LEC-84-11

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A NOTE ON THE DATA

The tables contained in this report are based on a review of state statutes that was completed in May, 1984. The original research was sent to state departments of education for verification and correction; about 75% responded. The underlying research is presented in longer tables, available at $3.00 per table. These underlying tables include citations and quoted or paraphrased statutory language. In a few cases, the short tables published here contain some additional corrections not shown in the longer tables.

ECS is making every effort to keep its material accurate and up to date. However, because of the voluminous information involved, errors may occur. If you identify an error or omitted information for your state, please write to Patricia Lines, ECS, Law and Education Center, including your address and telephone number, a citation to pertinent statutory material and copies of regulations or other policies that we should consult. We will be most grateful.

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COMPULSORY EDUCATION LAWS AND THEIR IMPACT ON PUBLIC AND PRIVATE EDUCATION

by Patricia Lines

INTRODUCTION

"Compulsory education" presents a startling oxymoron. Here are two words that (like jumbo shrimp) create internal tension. Education encompasses the transmission of values, culture and beliefs from one generation to the next. One hopes the next generation will receive with eagerness the best our education system can offer. One wonders whether this process can be compelled. Yet, compulsory education laws are the primary legal tool for regulating private schools and home instruction, and they often set the rules for much of the public school program as well.

Many current recommendations for education reform depend on compulsion in one form or another. Multiple warnings from the Commission on Excellence in Education, the ECS Task Force on Education for Economic Growth, the Carnegie Commission, and a bevy of other political and academic groups all suggest it is time to make our children buckle down. Without doubt, these national bodies are right to call attention to the serious neglect of young minds. They are right to call on educators to prepare children for a new age and the demands of an information society. They are right to urge this country to reclaim its position as a leader in technology in the world. The temptation to pursue these popular reforms through complusion is great. Yet, we do not want these children to all turn out the same. Nor do we want all our schools to be alike. Requiring the same program for everyone has its limitations.

This paper is the third in a series. The first two papers deal with constitutional issues surrounding regulation of private education, the historical treatment of religion in public schools and compulsory education, and the combined impact of these two factors on the development of private schools. This third paper further explores some of the implications of compulsion in education, for public schools, for private schools and for home instruction. In particular, this paper comprehensively reviews the policies in the 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. This paper is based upon the prior papers and interviews with state officials on how compulsory education laws are working. For the interviews, we chose officials in states representing extremes in policy choices: longest or shortest school year, most or least-severe sanctions, and so forth. We interviewed approximately 120 education leaders in 15 states. Those interviewed included legislators, state school chiefs, state school board members, staff serving state officials, private educators and parents engaged in home instruction.

Suggested legislation based on this review is presented in the Appendix. The paper recommends that compulsory education requirements be kept at a minimum, and that reforms be achieved through a public education program that is so enticing that students will want to take advantage of it.

COMPULSORY EDUCATION LAWS: A REVIEW

Compulsory education laws typically are criminal laws, setting minimum requirements to protect children from parental neglect or from their own thoughtlessness. They generally aim to assure the state that children receive the education they need to become self-sufficient adults and responsible citizens.

Age: The typical state law requires parents of children aged 7 through 15 to educate their children or send them to school, or face a fine and a jail sentence. The accompanying tables provide greater detail on these requirements.

Table 1 provides information on the ages of children subject to the compulsory education laws, common alternative ways to satisfy the law's requirements, and exceptions. Most states require education to begin at age 6 or 7. Twenty-nine jurisdictions specify age 7; 17 specify age 6. Arizona has set the beginning age at 8, in deference to Mormons who run "kitchen schools" for younger children. Iowa, Pennsylvania, Puerto Rico, and Washington also have set the starting age at 8.

None of the people interviewed in states with an older beginning age for compulsory education had difficulty with the law. In some cases parents keep their 6- or 7-year old child at home, but these decisions seem to be based on realistic assessments of the actual maturity of the child, and could not be regarded as promoting truancy. At the other end of the spectrum, Guam, South Carolina, and Virginia set the age at 5; the Virgin Islands, at 4 or 5 (depending on the birthday of the child). While such early starting ages would seem to cause more problems for immature children, none of those interviewed reported a problem. A teacher from the Virgin Islands observed that most parents seem happy to have the children in school, and seem to regard it as a day-care center. Most likely, schools serving these younger children redesign the program to meet their needs.

The upper age at which children are still subject to compulsory education laws ranges from 15 to 18. In 30 jurisdictions, the upper age limit is 15; in 11, it is age 16; and the Virgin Islands specifies 15 or 16 (depending on birthday). Jurisdictions with higher covered ages include American Samoa (age 18); California, Hawaii, Kentucky, New Mexico, Ohio, Oklahoma, Oregon, Utah and Wisconsin (age 17). Mississippi and Puerto Rico end the requirement after age 13; and Washington, after age 14.

Table 1 reveals that many states require public schools to serve a broader age range than the age range specified for compulsory education. Thus, parents have the option of sending their 5- or 6-year old to kindergarten, but they are not compelled to do so under penalty of law. Likewise, some children may appropriately be ready for the world of work at an earlier age, but children over the maximum age of compulsory education still have the right to attend school until graduation. A large number of states do not specify an upper age for those the public schools must serve. This strongly suggests that even adults are entitled to a public elementary and secondary school education, but there has been no case law on the point.

Exceptions and Alternative Ways to Meet Requirements: Flexibility often takes the form of alternative ways to meet the education requirement, or exceptions. Completion of a particular grade is often accepted in lieu of an upper age limit. Seventeen jurisdictions exempt children from the requirement, regardless of age, after they graduate from grade 12. Another 20% exempt children after they complete a specified grade, from 8th through 10th grade. Exemptions based on walking distances (often only two miles), work requirements, and handicap are also frequent. A wide range of other exemptions is shown in Table 2. Home instruction, discussed below, is often officially recognized in state statutes and presents yet another alternative to school attendance.

Sanctions: Table 3 outlines the sanctions available for violation of compulsory education laws. As can be seen, most states impose a fine and a jail sentence for noncompliance. Kansas is an exception, with no penalties for parents. Seventeen states provide for a fine alone. Mississippi has the longest jail term, at one year, and, with Vermont, the highest cash fine, $1,000. Mississippi had no sanctions until two years ago, and seems now to be compensating for this. While Mississippi does not yet have complete data on truancy statewide, its data on "dropouts" (i.e. children who were once enrolled and then became fulltime truants) indicates no significant changes in the dropout rate among children in the age range covered by the law, after one year of the new law. When asked, one official in that state expressed an opinion that the new sanctions were not too important in preventing truancy, but that a provision for attendance officers should prove to be extremely helpful. Attendance officers in Mississippi have a legal mandate to obtain compliance through student and family counseling and similar alternatives before initiating criminal proceedings. Michigan, with the second-longest jail term, imposes a 90-day maximum.

Among states that have both fines and jail sentences as sanctions, Pennsylvania has the least severe penalties -- $2 for the first offense, $5 for subsequent offenses, and a jail sentence of five days if the fine is not paid. An attorney in the office of the attorney general in Kansas reported no problem with the lack of criminal penalties for parents; another disagreed. The officials interviewed in Pennsylvania said that the light penalties posed no problem. None of the officials interviewed in states with no or few penalties believed that the lack of sanctions led to increased truancy. In contrast, in other states, some officials and prosecutors were reluctant to enforce the law against parents, especially where parents were making an effort to educate their children.

Sanctions against the child typically focus on declaring the child truant, or delinquent, or assigning the child to a special school. A few states specify expulsion. Texas has recently adopted a new law that states that the child "may not" receive credit for classes if he or she has more than five days of unexcused absence in a semester. This provision is causing some problems, because it limits excused absences to religious holidays, and does not take into account out-of-school educational programs, such as organized travel with other students.

All in all, most of the officials interviewed were of the opinion that the severity of the sanction had little impact on truancy. Further, jailing a parent because the parent has failed to meet the law's requirements always runs the danger of injuring the one to be protected -- the child. Expelling the child seems equally futile. A few states have developed other alternatives, such as student or family counseling in California and Mississippi and alternative programs in Tennessee.

Length of School Day and School Year: Table 4 provides information on state minimum requirements for the school day and school year. The most typical school term is 180 days, with 22 states setting the term to this length by statute or regulation. Twelve states set the term at 175 to 179 days. The shortest school year is in Iowa, which requires "24 weeks" (120 days), but permits the state board to require a longer school year for both public and private schools, which it has done. The next lowest minimum is in Arkansas, at 150 days. Three jurisdictions specify a maximum compulsory school year: Puerto Rico, 10 months; Rhode Island, 190 days; and South Dakota, 190 days. The longest instructional school year is difficult to determine, because some states include noninstructional days in the school-term mandate. Most states require around 180 days.

States specifying the minimum length for the school day tend to require between 5 and 6 hours. Texas requires the longest school day, 7 hours. A large number of states vary the requirement according to grade level: a 2.5- or 3-hour day appears to be the minimum requirement for kindergarten. Many states have no statutory provision for the length of the school day.

Kansas, Nebraska, and Washington specify a number of hours per year, but none of these represents a true flexible-time provision. The school year is set in number of days by either statute or board regulation, and this in turn regulates the hours per day. The specification of hours per year simply aids in setting limits on the numbers of snow days, counseling days and similar time taken away from instructional time in a school year. Wisconsin, on the other hand, is now experimenting with a true flexible-time rule for private schools and home instruction. In its new law, Wisconsin requires 900 hours per year for all nonpublic education; the intent is to allow private educators to determine their own schedules.

TABLE I

A SUMMARY OF STATE COMPULSORY EDUCATION OR SCHOOL ATTENDANCE STATUTES

	Ages of Compulsory Education (inclusive) min/max	Ages Public School Must Serve (inclusive) min/max	Completion of Grade	Home Instruction	Exceptions				
					Based on Walking Distance	Work Release	Handicap	Religious Objection	Other (For details see Table 2)
Alabama	7/15	6/NP	12	yes	yes 2 miles	yes	yes	NP	yes
Alaska	7/15	5 by Nov./19	12	yes	yes 2 miles	NP	yes	NP	yes
American Samoa	6/18	NP/NP	NP	NP	NP	NP	NP	NP	yes
Arizona	8/16	5/21	8 in 2 yrs: 10	yes	yes	yes	yes	NP	yes
Arkansas	7/16	5/20	8	NP	NP	NP	yes	NP	yes
California	6/17[1]	4.75 yrs by Sept./ adult age	NP	yes	NP	yes	yes	NP	yes
Colorado	7/15	NP/NP	12	yes	NP	yes	yes	NP	yes
Connecticut	7/15	5/20 or graduation	NP	yes	NP	yes	yes	NP	no
Delaware	6/15	6/21	NP	yes	NP	yes	yes	NP	yes
District of Columbia	7/16	NP/NP	NP	yes	NP	yes	yes	NP	yes

TABLE I Continued

	Ages of Compulsory Education (inclusive) min/max	Ages Public School Must Serve (inclusive) min/max	Completion of Grade	Home Instruction	Exceptions				
					Based on Walking Distance	Work Release	Handicap	Religious Objection	Other (For details see Table 2)
Florida	6/15	5 by Sept. 1/ NP	12	yes	NP	yes	yes	NP	yes
Georgia	7/15	6/NP	12	yes	NP	NP	NP	NP	yes
Guam	5/15	5 by Dec. 31/ NP	NP	yes	NP	NP	yes	NP	no
Hawaii	6/17	NP/NP	12	yes	NP	yes	yes	NP	yes
Idaho	7/15	5/21	NP	yes	NP	NP	yes	NP	yes
Illinois	7/15	3/21	NP	NP, but courts permit it	NP	yes	yes	NP	no
Indiana	7/15	NP/18	NP	yes	NP	yes	yes	NP	yes
Iowa	8/15	NP/20	8	yes	NP	yes	yes	yes	yes
Kansas	7/15	6 by Sept. 1/ NP	NP	NP	NP	NP	yes	yes	yes
Kentucky	6/17	NP/NP	12	no	NP	NP	yes	yes (Const.)	yes

TABLE I Continued

	Ages of Compulsory Education (inclusive) min/max	Ages Public School Must Serve (inclusive) min/max	Completion of Grade	Home Instruction	Exceptions: Based on Walking Distance	Exceptions: Work Release	Exceptions: Handicap	Exceptions: Religious Objection	Exceptions: Other (For details see Table 2)
Louisiana	7/15[1]	5 yrs, 8 mos/ NP	NP	yes	yes 2.5 miles; 1.5 miles from route	no[1]	yes	NP	yes
Maine	7/16	4/19	9	yes	NP	yes	NP	NP	yes
Maryland	6/15	NP/NP	NP	yes	NP	NP	yes	NP	no
Massachusetts	NP but 7/15[2]	NP/NP	NP	yes	NP	yes	yes	NP	no
Michigan	6/15	6 by Dec. 1/ NP	NP	NP, but yes (AG op. permits it if parent is certified)	yes (for children under 9 2 miles)	NP	NP	NP	yes
Minnesota	7/15	5/21	10	NP	NP	NP	yes	NP	yes
Mississippi	6/13	5/NP[3]	NP	yes	NP	NP	yes	NP	no
Missouri	7/15	5/19	NP	yes	NP	yes	yes	NP	no
Montana	7/15	6/18	8	yes	yes Supervised correspondence is then provided	NP	yes	NP	yes

TABLE I Continued

	Ages of Compulsory Education (inclusive) min/max	Ages Public School Must Serve (inclusive) min/max	Completion of Grade	Home Instruction	Exceptions				
					Based on Walking Distance	Work Release	Handicap	Religious Objection	Other (For details see Table 2)
Nebraska	7/15	4 with test or 5/NP	12	NP	NP	yes	yes	NP	yes
Nevada	7/16	6/NP	12	yes	yes	yes	yes	NP yes, by regs.	no
New Hampshire	6/15	NP/NP	8, if no high school available in district	NP, but state bd. regs. apply	NP	NP	yes	NP	yes
New Jersey	6/15	5/20	12	yes	NP	yes	yes	NP	no
New Mexico	6/17	5/17	12; 10 with approval	No[4]	NP	yes	yes	NP	yes
New York	6/15	5/21	12	yes	NP	yes	yes	NP	no
North Carolina	7/15	5 by Oct. 15/ NP	NP	NP	NP	no	yes	NP	no
North Dakota	7/15	5/20	12	NP	NP	yes	yes	NP	yes
Ohio	6/17	5/17	NP	yes	NP	yes	yes	NP	yes

TABLE I Continued

	Ages of Compulsory Education (inclusive) min/max	Ages Public School Must Serve (inclusive) min/max	Completion of Grade	Home Instruction	Exceptions				
					Based on Walking Distance	Work Release	Handicap	Religious Objection	Other (For details see Table 2)
Oklahoma	7/17	5/20	NP	yes	NP	NP	yes	NP	yes
Oregon	7/17	NP/adults	12	yes	yes 1.5 miles, age 7-9; 3 miles, 10 & up	yes	yes	NP	yes
Pennsylvania	8/16	6/20	NP	yes	yes 2 miles in certain districts	yes	yes	NP	yes
Puerto Rico	8/13	NP/NP	12[5]	NP	yes	NP	NP	NP	yes
Rhode Island	7/15	NP/NP	NP	yes	NP	NP	yes	NP	yes
South Carolina	5/16[10]	5 by Nov. 1/21	12	yes	NP	NP	yes	NP	yes
South Dakota	7/15	5/21	8	yes	NP	NP	NP	NP	yes
Tennessee	7/16	NP/NP	NP	NP	yes 3 miles	yes	yes	NP	yes
Texas	7/16	NP/NP[6]	NP	NP	NP	yes	yes	NP	yes

TABLE I Continued

	Ages of Compulsory Education (inclusive) min/max	Ages Public School Must Serve (inclusive) min/max	Completion of Grade	Home Instruction	Exceptions: Based on Walking Distance	Exceptions: Work Release	Exceptions: Handicap	Exceptions: Religious Objection	Exceptions: Other (For details see Table 2)
Utah	6/17	5/adult age	12	yes	yes 2-1/2 miles	yes	yes	NP	yes
Vermont	7/16	6 by Jan. 1/ NP	NP	yes	yes	yes	yes	NP	no
Virginia	5/16	2/21 (handic.) only	8	yes	yes[7]	NP	yes	yes	yes
Virgin Islands	4 or 5/ 15 or 16	NP/NP	8	yes	yes under age 15	no	NP	NP	yes
Washington	8/14	5/20	9	NP	NP	yes	yes	NP	yes
West Virginia	6/15	0/21[8]	NP	yes	yes 2 miles	yes	yes	NP	yes
Wisconsin	6/17	5/NP[9]	NP	yes	NP	NP	no	NP	yes
Wyoming	7/15	6/20	NP	NP	NP	NP	yes	NP	yes

SOURCE:
This table is based upon "State Legislative Policies on Private Education" Tables II(B), II(C), II(E)(6), II(E)(7), II(E)(8), II(E)(9) and II(E)(10).

TABLE I Continued

NOTES:

NP "NP" indicates no Statutory Provision. If we know of a regulation that applies we use a footnote superscript. These may be local or state regulations or less formal policies that apply, but we do not collect or reflect them all.

"A6" stands for attorney general.

1 There is a separate provision for part time attendance for 14- and 15-year olds who are working, in Louisiana. In California 16 and 17 year olds who are not working must attend school; others in this age group have a reduced requirement for hours of attendance. In Kentucky unmarried students age 16 and 17 may obtain a release from the requirement after a conference with the principal, and on submitting written signed permission from a parent or guardian. Married students in this age group are not subject to compulsion.

2 The state board sets the requirements.

3 Kindergarten optional; where there is no kindergarten 6 is the age of admission.

4 The compulsory education law requires school attendance; and the definition of private school expressly excludes home instruction.

5 The code says a child is excused where they "have completed each grade of the course of study . . . ."

6 The (state or local) board of education sets requirements.

7 For children under 10, 2 miles or 1 mile to bus line; ages 10 - 16 = 2.5 miles, or 1.5 miles from bus.

8 Age 23 for the exceptional child.

9 Residents over age 20 may be admitted if it will not interfere with pupils of school age.

10 Parents may obtain a waiver for children age 5.

A THANK YOU

This chart was prepared by law center staff, based on a reading of state statutes. Our reading was sometimes off the mark, but we prepared a profile for each of the 55 jurisdictions on this chart and asked a knowledgeable state official to review it and notify us of errors. We are extremely grateful to these people for their careful review, and to Chris Pipho and Connie Hadley, (ECS staff), who have helped us on the questions of compulsory age requirements.

TABLE 2

STATE COMPULSORY EDUCATION LAWS: DETAILS ON OTHER BASES FOR EXCUSAL

Alabama	
Alaska	When excused by school board; or in custory of court or law enforcement authorities
American Samoa	When excused or excluded for good reasons by the director of education
Arizona	For reasons satisfactory to the local board, teacher and probation officer probation officer of superior county court
Arkansas	When services are needed to support widowed mother
California	For pupils over age 16, when state proficiency standards are met
Connecticut	Certain gifted children; for pupils over 15, travel
Colorado	When in custody of the court or other law enforcement authorities; when suspended or expelled; when not immunized
Connecticut	
Delaware	When child has contagious disease
District of Columbia	For reasons defined by the board of education
Florida	When student is pregnant or is a parent and has no child care; upon recommendation of a circuit judge, with the superintendent's approval; when pupil has general education degree when parent cannot afford clothing for child
Georgia	In accordance with general policies promulgated by the state board and according to rules of local board
Guam	
Hawaii	When open investigation by the family court or district judge shows any other reason for non-attendance; when the child is enrolled in an alternative, approved program
Idaho	When expelled as a habitual truant
Illinois	
Indiana	When in service as a page for the Indiana General Assembly

Table 2 Continued

Iowa	When excused for sufficient reason by any court of record or judge; when "educational qualifications" are at 8th grade level.
Kansas	Partial excusal from those public school activities that are "contrary to the teaching of such child"
Kentucky	
Louisiana	
Maine	When child and parent have agreed to meet annually with the school board until child's 17th birthday to review educational needs
Maryland	
Massachusetts	
Michigan	When a page or messenger in the legislature
Minnesota	
Mississippi	
Missouri	
Montana	When a district judge or local board determines that attendance is not in the child's best interest; when attendance by Indian children is prohibited by tribal laws or treaties
Nebraska	
Nevada	
New Hampshire	When the district maintains no high school and child over 14 has completed elementary school; when the welfare of the child is best served by withdrawal, as determined by local superintendent
New Jersey	
New Mexico	Child under 8 may be excused by the local superintendent
New York	
North Carolina	
North Dakota	
Ohio	The local board of education may excuse children
Oklahoma	Child of 16 may be excused if in the best interest of the child and/or the community on written, joint agreement when child has "equivalent knowledge" of a H.S. graduate

Table 2 Continued

Oregon	When excused by the district school board; when age 16 or 17 with consent of the school administration or parent
Pennsylvania	When age 16 and enrolled in a trade or business school
Puerto Rico	When parents show good and sufficient cause for withdrawal; when child is dismissed for cause
Rhode Island	When child is excluded under some general law or regulation
South Carolina	When child is married; when unmarried and pregnant or has child out of wedlock; when a child age 10 or older has been absent from school for three years
South Dakota	
Tennessee	When over age 15 and attendance results in detriment to good order and discipline and is not of substantial benefit
Texas	When expelled in accordance with the law
Utah	Upon recommendation of the school superintendent, with approval of the district board of education
Vermont	
Virginia	When suffering from contagious disease, or not immunized; when child cannot benefit; when excused because of reasonable apprehension for personal safety as justified by court
Virgin Islands	
Washington	When child is age 15 and has received a certificate of educational competence or has attained 9th grade proficiency
West Virginia	When hazardous conditions jeopardize life, health or safety of child; because of extreme destitution
Wisconsin	When 16 years old and attending vocational, technical or adult education school or with parent's permission
Wyoming	When attendance would work undue hardship

Source: Private Education Table II(E).

TABLE 3

STATE COMPULSORY EDUCATION LAWS; SANCTIONS

	What sanctions does a parent face for violating compulsory education laws?			What sanctions may be applied to a child for violating compulsory education laws?			Other persons subject to sanctions for violation of compulsory ed. laws? Note: not all sanctions are criminal in this group.		
	Fine (Maximum Amount)	Jail Sentence (Maximum Days)	Other	Declared Truant	Declared Delinquent	Other	Public School Officials	Private School Officials	Any Person
Alabama	x ($100)	x (90)		x		Taken into custody			
Alaska	x ($200)	x (1 day per $2 fine)							
American Samoa	x ($15)	x (1 mo.)							
Arizona	x ($500)								
Arkansas	x ($10)	x ("subject to arrest")			x				x
California	x ($100 1st off. $250,- subseq.)			x		referred to juvenile court			
Colorado		x (held in jail until he or she complies)				held in contempt of court			
Connecticut	x ($5 for each week of viol.)			x		subject to arrest; $20 fine			
Delaware	x ($5 1st off. $50, subseq.)	x (2 days 1st off., 5 days subseq., if fine not paid)		x		expulsion if truant over 3 times per year			
District of Columbia	x ($10)	x (5)					x	x	
Florida		x (60)	2nd[1] degree	x		treated as a dependent child	x	x	
Georgia	x ($100)	x (30)		x	x	taken into custody			x
Guam	x ($50)			x					
Hawaii	x ($500)	x (30)							

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TABLE 3 Continued

	What sanctions does a parent face for violating compulsory education laws?			What sanctions may be applied to a child for violating compulsory education laws?			Other persons subject to sanctions for violation of compulsory ed. laws? Note: not all sanctions are criminal in this group.		
	Fine (Maximum Amount)	Jail Sentence (Maximum Days)	Other	Declared Truant	Declared Delinquent	Other	Public School Officials	Private School Officials	Any Person
Idaho			"conditions" may be imposed on any person encouraging truancy	x		expulsion			x
Illinois	x ($500)	x (30)		x					x
Indiana	x ($500)	x (6 mos.)				reported to intake officer of the juvenile court	x	x	x
Iowa	x ($100)	x (30)		x		placed in special school or class			x
Kansas				x		placed on probation or in youth residential center			
Kentucky	x ($10 1st off.; $20, subseq.)			x		subject to jurisdiction of juvenile court)	x	x	
Louisiana	x ($15 for each day of viol.)	x[2]			x		x	x	
Maine	x ($200 - 500)			x					
Maryland	x ($50)			x		committed[3] to a parental school			x
Massachusetts	x ($20)					declared[4] in need of services; in some cases, a fine of $5			x

TABLE 3 Continued

	What sanctions does a parent face for violating compulsory education laws?			What sanctions may be applied to a child for violating compulsory education laws?			Other persons subject to sanctions for violation of compulsory ed. laws? Note: not all sanctions are criminal in this group.		
	Fine (Maximum Amount)	Jail Sentence (Maximum Days)	Other	Declared Truant	Declared Delinquent	Other	Public School Officials	Private School Officials	Any Person
Michigan	x ($50)	(90)	x	x		sent to ungraded schools for instruction			
Minnesota	x	x		x	x	sent to ungraded classes and disciplined by the court			
Mississippi	x ($1000)	x (1 yr.)							
Missouri	x ($25)	x (10)		x		subject to arrest and placement in school, home or place of detention			
Montana	x ($20)	x (30 - if fine not paid)	give bond with sureties of attendance				x	implied	
Nebraska	x ($500)	x (3 mos)							x
Nevada	x ($1000)	x (6 mos).		x					x
New Hampshire	x ($100)		probation; conditional discharge	x		districts determine discipline of truants			x
New Jersey	x ($25 1st off.; $200 subseq.)				x				
New Mexico	x ($500)	x (6 mos)	guilty of a "petty misdemeanor"			child considered neglected or in need of supervision	x	x	

TABLE 3 Continued

	What sanctions does a parent face for violating compulsory education laws?			What sanctions may be applied to a child for violating compulsory education laws?			Other persons subject to sanctions for violation of compulsory ed. laws? Note: not all sanctions are criminal in this group.		
	Fine (Maximum Amount)	Jail Sentence (Maximum Days)	Other	Declared Truant	Declared Delinquent	Other	Public School Officials	Private School Officials	Any Person
New York	x ($10 1st off.; $50 subseq.)	x (10, 1st off.; 30 days subseq.)		x		suspension, transfer	x		x[5]
North Carolina	x ($50)	x (30)					x	x	
North Dakota	x ($500)	x (30)					x		x
Ohio	x ($20)	x (30 days if fine not paid)	give bond with sureties of child's attendance		x	classified as a dependent child			
Oklahoma	x ($25 1st off.; $50, 2nd off.; $100, subseq.)					reported to district attorney[4]			x
Oregon	x $100	x (3)	x						
Pennsylvania	x ($2 1st off.; $5 subseq.)	x (5 days if fine not paid)		x	x	subject to arrest; declared incorrigible	x	x	
Puerto Rico	x ($5, 2nd off.; $10, subseq.)								
Rhode Island	x ($20)					deemed a wayward child			
South Carolina	x ($50)	x (30)			x				
South Dakota	x ($50 1st off., $100, subseq.)	x (30 days, 2nd off.)							
Tennessee	x ($10)					reported to county or juvenile judge	x		

TABLE 3 Continued

	What sanctions does a parent face for violating compulsory education laws?			What sanctions may be applied to a child for violating compulsory education laws?			Other persons subject to sanctions for violation of compulsory ed. laws? Note: not all sanctions are criminal in this group.		
	Fine (Maximum Amount)	Jail Sentence (Maximum Days)	Other	Declared Truant	Declared Delinquent	Other	Public School Officials	Private School Officials	Any Person
Texas	x ($25 1st off.; $50 2nd off.; $100 subseq.)			x		sent to state training or other school; no course credit			
Utah	x ($299)	x (6 mos.)		x		juvenile court has jurisdiction; after age 16 expulsion from school			
Vermont	x ($1000)						x		
Virginia	x ($100)					proceeded against as a child in need of services			
Virgin Islands	x ($25)					taken into custody	x		
Washington	x ($25 each day for viol.)					matter brought before juvenile court	x	x	
West Virginia	x ($50 + cost of prosecution)	x (20)					x		
Wisconsin	x ($50)	x (3 mos)				court exercises jurisdiction	x		
Wyoming	x ($25)	x (10)		x					

Source: Private Education Tables II(F)(1), II(F)(2), II(F)(3), and II(F)(4).

ABBREVIATIONS: "Off." is for "offense." "Viol." is for "violation."

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TABLE 3 Continued

FOOTNOTES:

1 The parent is not liable if unaware of child's absence, or if unable to provide clothing.

2 Jail sentence only applies if absence is due to participation in an unauthorized demonstration.

3 Limited to truancy.

4 In Massachusetts, literate minors age 16 and 17 are subject to fine; in Oklahoma children 16 and over subject to fine.

5 Applies only to making a false statement regarding any matter required under the compulsory attendance law.

TABLE 4

MINIMUM REQUIREMENTS
LENGTH OF SCHOOL DAY AND SCHOOL YEAR; PUBLIC AND PRIVATE SCHOOLS AND HOME INSTRUCTION

	Public School		Private School		Home Instruction		Other Requirements
	Hours per day	Days per year	Hours per day	Days per year	Hours per day	Days per year	
Alabama	6	NP (175)	6	NP	3	140	3 hrs. between 8:00 AM and 4:00
Alaska	5 (grades 4-12) 4 (grades 1-3)	170/180	hours must be "comparable" to public school	must be "comparable" to public school	4	"full time"	must be enrolled "full-time" correspondence course
American Samoa	NP	NP	NP	the same number of days as public schools	NA	NA	
Arizona	NP	175	"for the full time" that public schools are open	"for the full time" that public schools are open	NP	NP	
Arkansas	5	150	5	150	NA	NA	
California	3 - 6[2]	NP/175 to receive state funds	NP	NP	3	175	
Colorado	NP	176	NP	172	NP	NP	
Connecticut	4	180	NP	NP	NP	NP	
Delaware	NP	180	NP	NP	NP	NP	
District of Columbia	NP	NP	NP	NP	must be equivalent to public schools	must be equivalent to public schools	
Florida	5 (grades 4-12) 4 (grades 1-3) 3 (kinderg.)	180 or 1050 hrs. (grades 9-12)	for "entire school term"	for "entire school term"	NP	NP	
Georgia	NP	180	4 1/2	180	4 1/2	180	
Guam	NP	180	NP	NP	3	170	
Hawaii	NP	NP	NP	NP	NP	NP	
Idaho	NP	NP (180)	NP	for a period "equal" to the public schools	NP	NP	

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TABLE 4 Continued

	Public School		Private School		Home Instruction		Other Requirements
	Hours per day	Days per year[1]	Hours per day	Days per year	Hours per day	Days per year	
Illinois	NP (2.5 - 4 by regs.)	176/185	NP	NP	NP	NP	
Indiana	NP	NP	NP	NP	NP	NP	
Iowa	NP	24 consecutive weeks or 4 longer (180)[7]	must be "equivalent" to public schools	must be "equivalent" to public schools	must be "equivalent" to public schools	must be "equivalent" to public schools	
Kansas	5 (grade 12) 6 (grades 1-11) 2.5 (kindergarten)	180 or 1080 hrs.	5 (grades 12) 6 (grades 1-11) 2.5 (kindergarten)	180	NA	NA	
Kentucky	6 hrs min., 9 hrs max.	179/185	for "full term" of public school	same as public	6	175	
Louisiana	5	180	NP	180	NP	180	
Maine	NP (5 by regs.)	175/180	long enough to allow implementation of program	175/180	NP	NP (180 by regs.)	
Maryland	3 hours	180 or 1080 hours	NP	NP	NA	NP	
Massachusetts	NP	180	NP	NP	NP	NP	
Michigan	NP	180	NP	attendance must be same as public schools	NP	NP	
Minnesota	NP	175	NP	175	NA	NA	
Mississippi	5 min. 8 max.	155	NP	NP	NP	NP	
Missouri	6	NP	NP	NP	"usual school hours"	"usual school hours"	"usual school hours"
Montana	6 (grades 4-12) 4 (grades 1-3) 2 (kinderg.)	180	same as public	180 or equivalent	NP	180 or equivalent	
Nebraska	6.2 (9-12)[6] 5.9 (K-8)	175	6.2 (9-12)[6] 5.9 (K-8)	175	NA	NA	

TABLE 4 Continued

	Public School		Private School		Home Instruction		Other Requirements
	Hours per day	Days per year[1]	Hours per day	Days per year	Hours per day	Days per year	
Nevada	NP (2-5.5 by regs.)	180	NP	NP	NP	NP	
New Hampshire	NP	180[3]	NP	NP	NA	NA	
New Jersey	NP	NP (180[4])	same as public	same as public	NP	NP	same as public
New Mexico	NP	NP	NP	same as public	NP	NP	
New York	NP; 5 (K-6) to 5.5 (7-12) by regs.	180[5]	same as public	180	same as public	180	
North Carolina	6 (grade 4 and up)	180	NP	"at least nine calendar months"	NA	NA	
North Dakota	NP	175/180	NP	180	NA	NA	
Ohio	5	178/182	same as public	same as public	NP	NP	
Oklahoma	6	175/180	same as public	same as public	same as public	same as public	
Oregon	NP	NP (175)	same as public	same as public	NP	NP	
Pennsylvania	5.5	180	same a public	same as public	same as public	same as public	
Puerto Rico	NP	8 mos. min. 10 mos. max.	NP	NP	NP	NP	length of school shall be fixed by the Sec. of Ed.
Rhode Island	NP	190 max.	"substantially equal" to public schools	"substantially equal" to public schools	same as public	same as public	
South Carolina	NP	NP	NP	NP	NP	NP	
South Dakota	5 1/2	175 min. 190 max.	"for a like period" as in public schools	"for a like period" as in public schools	"for a like period" as in public schools	"for a like period" as in public schools	

TABLE 1 Continued

	Public School		Private School		Home Instruction		Other Requirements
	Hours per day	Days per year[1]	Hours per day	Days per year	Hours per day	Days per year	
Tennessee	NP	180/200	NP	same as public	NA	NA	
Texas	7	165	NP	NP	NA	NA	
Utah	NP	9 mos.	NP	NP	NP	NP	
Vermont	NP	175	NP	NP	NP	NP	school board determines the number of hours
Virginia	NP	NP	same as public	same as public	same as public	same as public	
Virgin Islands	6	school year begins first Monday in September, ends last Friday in June	NP	no more than 90 days vacation allowed in one school year	NP	NP	the school year shall begin the the first Monday in Sept., and end last Friday in June
Washington	2.5 (k) to 6 (grades 9-12)[6]	180	same as public	same as public	NA	NA	
West Virginia	NP	180 min. 185 max.	same as public	same as public	"equal to the school term" of local schools	"equal to the school term" of local schools	
Wisconsin	NP	180	875 hours of instruction/year	875 hours/yr.	875 hours/yr.	875 hours year	
Wyoming	NP	175	same as public	same as public	NA	N/A	attendance required for the entire time that the public schools are in session

Sources: Private Education Tables II (D) (1) & (2); III (B) (1) & (2); and IV (D) (1) & (2).

NOTES

"NP" indicates no statutory provision. Where state officials have supplied us with regulations we also indicate that, in the footnote.
"NA" indicates the question is not applicable for lack of any express statutory provision for nonschool education options.

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TABLE 4 Continued

[1] Where two figures are given, the first is instructional days, and the second, the term. Many states allow districts to use up to a specified number of days for teacher training, conferences with parents, emergencies, or holidays. Some states allow additional noninstructional days for specific purposes, but that is not reflected here. Board regulations that deviate from the statutory provision are in the parenthesis. Where board regulations are fewer than the statutory minimum, the board has apparently set a lid on the number of unspecified emergency days that may be excluded from the requirement.

[2] Varies by grade and status.

[3] The local board may reduce this, upon state board approval.

[4] A.G. Op. sets the year at 180 days.

[5] There is provision for a shorter duration if instruction is equivalent.

[6] For Nebraska, this is stated in terms of total requirements of 1080 hours for grades 9-12; 1032 hours for K-8. This is stated in terms of total requirements of 450 for kindergarten; 2,700 for grades 1-3; 2,970 for grades 4-6; 1,980 for grades 7-8; and 4,320 for grades 9-12.

[7] The state board may require a longer term.

PUBLIC SCHOOLS AND COMPULSORY EDUCATION LAWS

Compulsory education laws, in place for approximately 100 years (more in the northeastern states), represent the first attempt to exercise state control over local education policy. By now, states have enacted many other laws regulating many aspects of education, but the compulsory education laws continue to play a role. In addition to setting the length of the school day and year, compulsory education laws typically specify the basic curriculum. These laws have sometimes been the target of education reformers, who would alter them to require more hours a day and more days a year in school, to extend the age span for compulsory education upward or downward, or to eliminate "soft" courses and replace them with required "hard" courses.

Ironically, few of the recent reforms focus on the problem of truancy, and the related problem of dropping out. It is even greater irony that most enforcement efforts pursuant to compulsory education laws are directed at parents and schools that are making a good-faith attempt to educate their children, and not at truancy in the classic sense. Truant children seem to slip beyond the vision of most public educators. For example, a study in Boston several years ago revealed large numbers of young children, particulary Spanish-speaking children, on the streets during school hours. Because children who have taken to the streets usually present greater-than-average problems to the educator, there is a suspicion that public school officials would rather not face the difficult task of educating them.

Statistics on truancy are extremely unreliable. One class of truants - those enrolled and attending school (the occasional truant) can be counted with some confidence. The Institute for Social Research at the University of Michigan polls high school seniors annually, and reports that for 1983 (the most recent year for which they have data), 34% of high school seniors skipped a class once in a four week period; 28% skipped a whole day in that period. Full-time truants are harder yet to count, but they may account for around 9% of the school-aged population — around five million nationally. There is evidence that the truancy rate is persistently higher among minority populations. The population of truant children exceeds the population of children in home instruction or fundamentalist Christian schools (many of which have met compulsory education requirements) by a factor of 10, and by the most conservative estimates exceeds the population of children in unapproved education settings by a factor of 100 or more. Yet, enforcement efforts appear to be directed at families who place their children in unapproved education settings, more than at truants enrolled in school and full-time truants on the street. Dropouts, who often are beyond the age of compulsory education, present yet another challenge to educators.

On the other side of the coin, expanding compulsory education requirements to advance education excellence for students who do come to school has met political obstacles. While most of the people directly affected - parents, teachers, and students - seem happy with most of the reform movement, extending these requirements has not won their support. Educators seem surprised at the resistance to the recommendation for more time in school, the least popular of all the recommendations for reform made in the past year. But parents know how much children yearn for the last day of school. Some also know of more exciting education opportunities outside the school setting. Some parents have sized up their youngsters and decided, usually correctly, that an immature child would best be kept at home an additional year before starting school.

Questions about compulsion are emerging out of the reform movement itself. An opposite movement towards choice in education seems to be emerging. The Minnesota Business Partnership, for example, has recently recommended an elective education system, possibly including vouchers, for 11th and 12th graders. Education leaders in Colorado, Minnesota and Tennessee have also begun to urge examination of limited tuition-voucher programs.

Although they may find it tempting, public policy makers do not have to utilize compulsory education laws to reform education. They could restrict increased requirements for time in school to public schools. In fact, as shown in Table 4, many states presently do this. They have different requirements for compulsory education and for public school operations. One is a minimum, and typically enforceable by criminal sanctions. The other represents what public schools must offer and what a student enrolled in public school must follow if he or she wishes to graduate.

Rather than requiring a longer day, public schools might achieve the same ends by offering a longer day, in which they could use the extra hours in bold new ways. They could offer special courses in the extra hours, enticing children with new and interesting subjects, less formality, different teachers, or in other ways varying the optional program from the regular program. (These extended hours should also be made available to children in private schools and home instruction, at least in states with legal or judicial shared-time requirements.)

Some of these special courses could be designed to appeal to the dropout and the potential dropout as well as children in regular attendance. They could be made available regardless of whether the child is enrolled in a school. If well-designed, such special courses might help lure the dropout back into school on a full-time basis. Experimentation in the extra hours might lead to more reform of the regular curriculum with, for example, courses that can help those vulnerable to dropping out. Of course, an extra hour for study hall would probably be more of a nuisance than a benefit; everything depends on the willingness of educators to use the time to attract students into new education activities.

To be sure, there are some problems with this approach. First, the compulsory education laws were once seen as necessary complements to child labor laws, and even today, some agricultural interests would like to keep school hours to a minimum in order to assure cheap child labor. Some of the opposition to North Carolina's experiment with a 200-day year is believed to stem from such considerations. Poor children are the likely victims. Second, children from disadvantaged families may not participate in voluntary extra programs, although most would benefit from the experience.

The solution here is to attack each problem more directly. Child labor laws should specifically address the issue of how many hours a child should be allowed to work. Special programs have always been needed to assure that disadvantaged children are fully served by the education program. Finally, we must realize that for some children, more schooling is not quite the right approach. Some are ready for the world of work, and existing compulsory education laws reflect this through frequent provisions for excusal from the law's requirements after a certain age.

PRIVATE SCHOOLS AND COMPULSORY EDUCATION LAWS

Altering compulsory education laws has a more profound impact on private schools because these laws are, in most states, the only existing vehicle for regulating these schools. Stricter laws may become unenforceable, if the experience in those states with relatively strict laws is a guide. Throughout this group of states, parents have placed their children in unapproved schools despite the risk. Their reasons vary. Some have overriding religious concerns and others are dissatisfied with or mistrust the public school system. Occasionally they seek only to escape the effects of public school desegregation programs, but this motive seems to be relatively insignificant in the overall growth of the private schools population.

Religious and philosophical reasons seems extremely important in the rise of new private schools. In some states, parents and individuals operating unapproved private schools have received or are faced with jail sentences. In one case, a fundamentalist Christian clergyman in Nebraska refused to comply with court orders directing him to either obtain state approval for his school or cease operating, and he was jailed twice. His church was padlocked to enforce the law. Nebraska ultimately changed its law to accomodate citizens seeking more education options. Other states are also experiencing pressure to expand choices under the compulsory education laws.

A Brief Description of Private Schools Today

Private schools in America present a picture as diverse as the nation itself. They serve many important social and education goals, as reviewed in the two other papers in this series. For the purposes of this paper, it is important to know how many children are enrolled in private schools and whether they are in fact achieving the skills they need for the future. While the proportion of children in these schools has remained fairly steady in relation to those in public schools, a major shift has occurred within the nonpublic school population. Catholic school enrollments declined from the 1960's until the early 1980's; other nonpublic school enrollments rose sharply.

Public school enrollments declined from approximately 45.9 million in 1970 to 39.6 million in 1982. Catholic school enrollments have also declined from almost 5 million at their peak in the mid-sixties, to a little more than 3 million today. The U.S. Bureau of the Census has estimated that as of 1975 there were close to 1.4 million children in non-Catholic, private schools. Most likely the census bureau counted only traditional and accredited schools. A more careful study for the National Center for Education Statistics suggests there are about 15,000 non-Catholic private schools serving approximately 2 million students, and that this population is increasing by 100,000 students per year. If present trends continue, in a few years, Catholics will not represent a majority of the private school population. (Potential explanations for this shift are explored in Cooper et al, 1982; and Lines, 1984.)

As a general rule, children in private schools perform better then children in public schools on nationally standardized tests. Considerable debate continues over whether this is due to the quality of the schools or to the socioeconomic status of the students. For purposes of considering compulsory education policies, this issue is unimportant. It is enough to observe that, by available measures, children in private schools are developing

the skills they need. Some policy makers are concerned that some private schools - especially newer fundamentalist Christian schools - are not performing adequately. The data is scant, but where it exists, children in these schools also test at or above national norms, on average. Several states exempt private schools from normal state requirements if they or the families have religious objections to these requirements; some of these states also test the children. Officials in these states report children perform at or above national averages.

State Regulation of Private Schools

Tables 5 and 6 outline the most significant state rules for private schools. Virtually all states require some record-keeping and/or reporting of data. Illinois has no statutory requirement, but after review, its state board decided that its voluntary reporting system worked well enough, and the few private schools that failed to report data represented a very small number of children. Licensing, perhaps the strictest form of regulation, is required in a few jurisdictions - American Samoa, the District of Columbia and Hawaii (where the state supreme court has upheld the system), Nevada and Puerto Rico. Licensing is also required in Maryland, Pennsylvania and Wyoming, but the law exempts church schools. Accreditation is required in some of these same states, as well as in Idaho, Kansas, Michigan, and Tennessee. Accredition is required for all but church schools in Nebraska (if parents object to accreditation) and North Carolina. Some form of approval, falling short of licensing or accredition, is required in Alaska, Delaware, Maine, Massachusetts, New Hampshire, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, the Virgin Islands, Washington, and Wyoming. Alabama and New Jersey require state approval, but exempt church schools.

There are few sanctions applied to private schools when they fail to comply with any of these rules. State statutes rely, instead, on prosecution of parents under the compulsory education laws. In Nebraska, state officials proceeded against the officials operating private schools as well as parents, but the legal authorization to do so remains an open question. The defendants did not raise the issue in their appeals to courts of record.

Teacher certification has long been a thorn in the side of some private schools. Some elite schools prefer to employ teaching personnel who are proficient in particular fields, regardless of certification. The newer Christian schools believe, as a principle of faith, that certifying a teacher is tantamount to certifying the clergy, and would violate their religious principles. Nonetheless, 13 jurisdictions require certified teachers in all private schools. In a few additional states, certification of private school teachers is a voluntary matter. Washington law requires certification, but allows an outstanding individual to teach under the supervision of a certified teacher; and Nebraska requires certification except where parents sign a statement that state requirements for certified teachers violate their religious beliefs. Louisiana law specifies some form of state approval of teachers, but not certification.

Typically, state law lists the subjects that must be taught in private schools. Many states require only history, constitutional principles and citizenship, trusting private schools to make appropriate choices for the remaining curriculum. English, mathematics, and science are mentioned in a number of statutes. Almost half the jurisdictions specify that English be the language of instruction.

A few states require the testing of teachers or students, usually as an alternative to less

rigorous requirements, such as teacher certification. Alaska requires students to be tested if teachers are not certified, while Iowa requires student tests if the school does not meet approval requirements. Nebraska, as noted above, allows the state board to require student testing, in the absence of accreditation and certification for some church schools. Eight states require student testing without qualification. Two more have a voluntary program. Nebraska also requires testing of teachers who do not obtain certificates. Nevada tests all teachers. Oklahoma requires testing of private school teachers if a school desires accreditation.

Sixteen states prohibit race discrimination in private schools. Sometimes this prohibition is tied to state aid. Typically the prohibition appears in the state's law dealing with public accommodations. In some cases schools are specifically included within the definition of public accommodation, and in other cases, the definition is very broad and seems to include private schools. Federal law also prohibits race discrimination in private schools, and many states prefer to have this important aspect of education policy be shaped by the federal government.

Despite this variation in state law, private schools remain surprisingly similar. Theodore Sizer, former dean of the Harvard Graduate School of Education, and now headmaster at a private school, has visited hundreds of private schools, including the newer fundamentalist Christian schools and Montessori schools. In his opinion, these schools are too much alike; there should be greater diversity. They tend to cover the same subjects in the same grades, to progress at the same rates, and to use surprisingly similar pedagogical methods.

Court Challenges

As noted, the primary vehicle for regulation of these schools is through the compulsory education laws. Rulings from the U.S. Supreme Court indicate that some of these requirements can go too far. In the 1920s the Court struck down laws in three states. In Pierce v. Society of Sisters (1925), the court struck down an Oregon law that required attendance at public schools only. In Meyer v. Nebraska (1923), the court struck down a Nebraska law that prohibited the teaching of foreign language to younger children. Finally, in Farrington v. Tokushiga (1927) it struck down a Hawaii law that involved excessive regulation of hours and textbooks of private language schools. These early cases indicate the Court's acceptance, however ill-defined, of parental rights to determine their children's education, derived largely from the freedom of speech and religion.

In 1972, in a landmark case, Yoder v. Wisconsin, the high court narrowly ruled that Wisconsin's compulsory attendance law could not be applied to the Amish (a religious community). The Court held that the state cannot compel children to attend school after grade 8, in the face of strong religious objections, and in the face of strong evidence that the children were developing into self-sufficient, competent citizens, able to function adequately in their communities. Lower courts have extended Yoder only when traditional religious beliefs are involved. Decisions outside of this narrow realm have been mixed, with most cases turning on state constitutional or statutory grounds.

Recent litigation over the status of private education has culminated in court rulings in a number of states, including Florida, Hawaii, Iowa, Kentucky, Maine, Michigan, Nebraska, North Dakota, Ohio, Washington, West Virginia and Wisconsin. Generally those states facing litigation require school attendance (rather than education) and certification of

private school teachers. These requirements tend to generate the kind of regulation that makes life most difficult for private schools. In a few states the central issue is state approval of curriculum or facilities, or zoning rules. Given the growth of fundamentalist Christian schools and other nonCatholic private schools, some of which are based on nontraditional education theories, states that require school attendance and set standards for the school will probably be challenged in the near future.

The litigation receiving the most attention from the media appears to be State v. Faith Baptist Church, dealing with the refusal of Rev. Everett Silevan to obtain approval from Nebraska for any aspect of his church-run school. The school uses a series of booklets called the Packet of Accelerated Christian Education (PACE), which includes instructional information and self-administered tests. The school does not use state-certified teachers, a requirement under Nebraska's former compulsory school attendance law. The Nebraska high court found the materials adequate, but upheld the state's requirement for certified teachers. The U.S. Supreme Court summarily dismissed an appeal because, based on the papers filed before it, it could not identify an important constitutional issue. This decision may be due to the posture in which the case went to the Court. Two Supreme Court cases dealing with private postsecondary institutions (NLRB v. Catholic Bishop of Chicago (1979) and St. Martin Evangelical Lutheran Church v. South Dakota (1981)) strongly suggest that regulation of private schools presents some serious constitutional issues.

Decisions of state courts and lower federal courts are mixed. For example, lower courts have upheld various state requirements in Florida, Hawaii, North Dakota, and Wisconsin. In some of these cases, parents refused to provide any evidence about their children's schooling. In other cases, state courts have ruled in favor of parents. In Ohio, the state supreme court struck down a system of state regulation that, by its literal terms, left no time for religious instruction in a private school. In a Kentucky case, the state court applied a unique state constitutional provision that prohibits requiring a child to attend a school that parents find objectionable for conscientious reasons.

TABLE 5

STATE REGULATION OF PRIVATE SCHOOLS:
APPROVAL AND REPORTING REQUIREMENTS, AND SANCTIONS

	Which of the following private school requirements are specified by statute?						Sanctions for enforcement of private school regulations	
	Accreditation voluntary or mandatory	Approval	Keep or report records or data	Other requirements	Licensing	Register with state	Withholding of state aid	Other sanctions
Alabama	vol.	mand.; vol. for church schools	mand.			mand.		
Alaska	vol.	mand.	mand.	meet health standards no more stringent than for public schools				
American Samoa	mand.	mand.	mand.	required annual report on calendar, curriculum, teachers, schedule; teacher health certificate	mand.	mand.		Director of education may enforce a modification of the program of study of schools held during nonschool hours if these schools interface with public schools
Arizona								
Arkansas				immunization if no religious objection; display of U.S. flag				
California			mand.					
Colorado	vol.		mand.					
Connecticut			mand.	immunization; teacher contracts regulated where state pays tuition				
Delaware		mand.	mand.	driver educ. disclosure of student records and transp. are regulated				

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TABLE 5 Continued

	Which of the following private school requirements are specified by statute?						Sanctions for enforcement of private school regulations	
	Accreditation voluntary or mandatory	Approval	Keep or report records or data	Other requirements	Licensing	Register with state	Withholding of state aid	Other sanctions
District of Columbia		mand.	mand.		mand.	mand.		License revocation - unlicensed person conferring degree subject to $2,000 fine or 2 years imprisonment, or both
Florida			mand.					
Georgia			mand.	health and safety requirements				
Guam			mand.					
Hawaii		mand.	mand.		mand.[1]			
Idaho	mand.							
Illinois			vol.	fire drills are regulated; health examinations required			yes (text book loans tied to civ. rts. compliance)	
Indiana	vol.		mand.					
Iowa		vol.	mand.	provide media cent. or specialist; guidance couns.; arrange sp. ed. and and conduct evaluations				Removal from list of approved schools
Kansas	mand.					mand.*		*Accreditation rescinded
Kentucky	vol.	vol.	mand.					
Louisiana		vol.	mand.				yes (transp. & tax credits tied to civ. rts. compliance)	

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TABLE 5 Continued

	Which of the following private school requirements are specified by statute?						Sanctions for enforcement of private school regulations	
	Accreditation voluntary or mandatory	Approval	Keep or report records or data	Other requirements	Licensing	Register with state	Withholding of state aid	Other sanctions
Maine	vol.	mand.[2]	mand.	student-teacher ratio no more than 30:1; include at least 2 consequtive grades from 9-12			yes	
Maryland		mand.	mand.	be open to state superintendent or his designee; protective eye devices in shop	mand.; church schools exempted		yes	
Massachusetts		mand.	mand.					
Michigan	mand.	mand.	mand.					Forfeiture of property tax exemptions, status, continuing non-compliance results in school closure
Minnesota			mand.				yes	
Mississippi	vol.		mand.				yes (textbooks only)	
Missouri								
Montana	vol.		mand.	protective eye devices in shop; health & safety regs.				
Nebraska	mand.[3] some schools exempt	mand.[3] some schools exempt	mand.	school bus drivers obtain permit; state fire day observed; testing of teachers where approval is not desired because of parental religious objection				

TABLE 5 Continued

	Which of the following private school requirements are specified by statute?						Sanctions for enforcement of private school regulations	
	Accreditation voluntary or mandatory	Approval	Keep or report records or data	Other requirements	Licensing	Register with state	Withholding of state aid	Other sanctions
Nevada		mand.	mand.	conduct fire drills; immunization; school buses subject to inspection; pre-license surety bond ($5,000)	mand.			
New Hampshire		mand.	mand.	display American flag; teachers take loyalty oath				
New Jersey		mand.; non-profit & church schools exempted	mand.	corporal punishment prohibited reasonable force o.k.				Operation of private school without approval is a misdemeanor
New Mexico	vol.	vol.	mand.	fire drills; drivers ed. regulated	mand., non-profit schools exempted			
New York			mand.	fire inspections required; school authorities may search for drugs				
North Carolina	mand. church school exempt		mand.			mand.		
North Dakota	vol.	mand.						
Ohio		mand.	mand.				yes (tuition credits tied to standards & civ.rts. compliance)	

TABLE 5 Continued

	Which of the following private school requirements are specified by statute?						Sanctions for enforcement of private school regulations	
	Accreditation voluntary or mandatory	Approval	Keep or report records or data	Other requirements	Licensing	Register with state	Withholding of state aid	Other sanctions
Oklahoma	vol.		mand.					
Oregon						vol.		
Pennsylvania		mand.	mand.	inspections; safe and sanitary premises, equipment and conditions	mand., church schools exempted			
Puerto Rico	mand.	mand.			mand.			
Rhode Island		mand.	mand.	submit changes in charter to Secretary of State & Bd. of Educ.		mand.		
South Carolina		vol.	mand.	minimum academic standards for schools receiving state aid				School buses not complying with rules must be painted color other than yellow and do not receive protection of laws as school bus
South Dakota	mand.	mand.	mand.					Failure to file reports is a misdemeanor and grounds for revocation of teacher's certificate
Tennessee	mand.	vol.	mand.	standards for approving private schools to be the same as for public schools				
Texas		mand.; vol. for church schools	mand.	immunization, unless it conflicts with religious belief				
Utah				Op. At. Gen: local bd. approves private school				

TABLE 5 Continued

	Which of the following private school requirements are specified by statute?						Sanctions for enforcement of private school regulations	
	Accreditation voluntary or mandatory	Approval	Keep or report records or data	Other requirements	Licensing	Register with state	Withholding of state aid	Other sanctions
Vermont		vol.	mand.	fire drills and record of same; traffic safety patrols authorized		vol.		Failure to comply with minimum course of study or misrepresenting approval status is criminal false advertising, fine up to $1,000 upon revocation of approved status, students become truants
Virginia	vol.							
Virgin Islands	vol.	mand.	mand.				yes (aid tied to 1st Am. compliance)	
Washington	state regs. provide for vol. accreditation	mand.	mand.			mand.		
West Virginia		vol.	mand.	participation in interscholastic athletic events regulated		mand. for nonapproved schools	yes	
Wisconsin		vol.	mand.	must have sequential curriculum				
Wyoming		mand.		non-parochial schools must post $10,000 performance bond prior to licensing	mand., parochial schools exempt			

Source: Private Education Tables III(A), III(B), III(B)(4), III(B)(7), III(C) III(D) and III(G)(2), III(G)(3)

NOTE:

[1] Statutes require a "permit." Case law refers to this as a "license."

TABLE 5 Continued

[2] The school must meet the requirements of the state department and the New England Ass'n of Colleges and Secondary Schools

[3] The requirement is mandatory except for schools where parents have religious objections to the requirement.

TABLE 6

REGULATION OF PRIVATE SCHOOLS:
REQUIREMENTS FOR TEACHERS, CURRICULUM, STUDENT TESTING, NON-DISCRIMINATION

	Do State Statutes Regulating Private Schools:						
	Require take or pass any form of test	Require students to take any form of test	Specify subjects that must be taught	Require Teachers be certified	Prohibit race discrimination	Require instruction be in English	If instruction must be in English, is there an exception for pupils who are not proficient in English
Alabama			yes, same as public	vol.[1]		x	
Alaska		yes (if teachers are not certified)		vol.[1]			
American Samoa			yes, as approved by Dept.	x			
Arizona							
Arkansas			yes, Am. Hist.			x	
California			same as public schools		limited to schools receiving state aid	x	x
Colorado			yes, reading writing, speaking, math., hist., civics, lit., science		x		
Connecticut		x	yes, U.S. hist., gov., citizenship			x	x

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TABLE 6 Continued

	Do State Statutes Regulating Private Schools:						
	Require take or pass any form of test	Require students to take any form of test	Specify subjects that must be taught	Require Teachers be certified	Prohibit race discrimination	Require instruction be in English	If instruction must be in English, is there an exception for pupils who are not proficient in English
Delaware		vol.	yes, U.S. & state const. & gov., free enterprise			x	
District of Columbia					x		x
Florida							
Georgia			yes, reading, language arts, math, soc. stud., science				
Guam							
Hawaii				x			
Idaho			yes, as set by state board	x	x		
Illinois					x	x	
Indiana			yes, U.S. & state Const., Am. hist., morals, safety, hygiene			x	
Iowa		x[4]	yes, ethnic cultures, environment, pub. health, foreign lang., phys. ed., fine arts, consumer ed., others	x		x	x

TABLE 6 Continued

	Do State Statutes Regulating Private Schools:						
	Require take or pass any form of test	Require students to take any form of test	Specify subjects that must be taught	Require Teachers be certified	Prohibit race discrimination	Require instruction be in English	If instruction must be in English, is there an exception for pupils who are not proficient in English
Kansas		x	yes, reading math., geog., spelling	x			
Kentucky			yes, but no specificity	x		x	
Louisiana			yes, spelling reading, writing, drawing, math, geog., grammar, U.S. hist., health, drugs & alcoh.	appr.[2]			
Maine			yes, hist. & Eng.	x		x	x
Maryland					x		
Massachusetts			yes, but no specificity				
Michigan			yes, same as pub. sch., fed. & state const., & gov., civics	x	x	x	x
Minnesota			yes, "common branches"		x	x	x
Mississippi							
Missouri		x	yes, U.S. & state Const., Am. hist.				

TABLE 6 Continued

	Do State Statutes Regulating Private Schools:						
	Require take or pass any form of test	Require students to take any form of test	Specify subjects that must be taught	Require Teachers be certified	Prohibit race discrimination	Require instruction be in English	If instruction must be in English, is there an exception for pupils who are not proficient in English
Montana			yes, as set by local bd.		x		
Nebraska	x[3]	x[3]	yes, Am. history & citizenship, patriotism, honesty, morality others	x[3]		x	
Nevada	x	x	yes, same as pub. sch. U.S. & state const., Am. institutions				
New Hampshire			yes, hist., gov., U.S. & state const.			x	x
New Jersey			yes, U.S. const., accident & fire prevention				
New Mexico							
New York		vol.	yes, same as pub. sch.		x	x	x
North Carolina		x	if receiving state aid				
North Dakota			yes, const., spelling, reading, math, lang., Engl. grammar, geog., U.S. hist., civics, nature, agric.	x			

TABLE 6 Continued

	Do State Statutes Regulating Private Schools:						
	Require take or pass any form of test	Require students to take any form of test	Specify subjects that must be taught	Require Teachers be certified	Prohibit race discrimination	Require instruction be in English	If instruction must be in English, is there an exception for pupils who are not proficient in English
Ohio			yes, Am. hist., gov., fed & state const.	x	(to qualify for tax credit)		
Oklahoma	vol.[1] (req'd for accreditation)		yes, same as pub. sch. vol.[1]	vol. (req'd for accreditation)			
Oregon			yes, U.S. const. & hist., fire safety			x	x
Pennsylvania			yes, Engl. (spelling, reading, writing), math, geog., U.S. & state hist., civics, safety, humane treatm. of animals, health, phys. ed., physiology, music art.		aux. serv's only	x	
Puerto Rico			x	x			
Rhode Island		x	yes, reading, writing, geog., math U.S. & state hist., Am. Gov.			x	x
South Carolina					handicapped placed in private schools only		
South Dakota		x	yes, hist. & patriotism	x	x	x	

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TABLE 6 Continued

	Do State Statutes Regulating Private Schools:						
	Require take or pass any form of test	Require students to take any form of test	Specify subjects that must be taught	Require Teachers be certified	Prohibit race discrimination	Require instruction be in English	If instruction must be in English, is there an exception for pupils who are not proficient in English
Tennessee			yes, Am. hist. & gov.				
Texas			yes, citizenship			x	x
Utah							
Vermont			yes, reading, writing, numbers, citizenship, U.S. & state hist. & gov., phys. ed., drugs & alcoh., Eng., literature, nat. sci.				
Virginia						x	
Virgin Islands			yes, as set by Commissioner	x	x		
Washington			yes, const., occup. ed., sci., math, lang., soc. stud., hist., health, reading, writing, spelling, art, music	x	(if receiving public funds)		
West Virginia		x	yes, U.S. & state hist., & const., civics, fire prevention			x	
Wisconsin			yes, reading, lang. arts, math, soc. stud., sci., health				
Wyoming							

TABLE 6 Continued

Source: Private Education Tables III(H)(1), III(H)(2), III(B)(3), III(E), III(B)(6), III(B)(5)(a), and III(B)(5)(b).

NOTES:

1 "Vol." means voluntary, as certain church schools are exempt. In Alaska any private school may elect an optional procedure and have students tested if teachers are not certified.

2 "Appr.: means state approval of teachers is required, although the statute does not require a certificate.

3 Teacher testing is required for schools which do not have certified teachers.
Parents must state religious objections to teachers certification. The state board has authority to require student testing in these schools.

4 Required of private schools seeking exemptions for other requirements.

HOME INSTRUCTION AND COMPULSORY EDUCATION LAWS

Throughout the history of education, home instruction has appealed to some families. John Stuart Mill received his early education from his father. Harvard recently admitted a young man who had been entirely taught at home. In isolated places in early America, home instruction was often the only choice. Today, in a few places in Alaska, Montana and other sparsely populated areas, this is still true. It is also often the choice of parents who are located abroad. Where families turn to home instruction because of geographical necessity, few people object.

On the whole, however, families who now teach their children at home do so as a matter of choice, often a value-laden choice. In some states public educators look askance at such choice. In others, they are supportive. In some states, public officials have decided that the home can be a school, and even use the term, home school. In this paper the terms, home school and home instruction, are used interchangeably to mean instruction by a parent or guardian of children in their own family. It does not include instruction of children from many families, but the boundaries between home schools and other schools can be blurred at times. The Morman "kitchen schools," for example, typically have a parent, meeting in the kitchen with that parent's child and one or two children from neighboring families. Even so, the rationale for state intervention increases when the teacher-student relation goes beyond an immediate family.

A Brief Description of Home Schooling Today

Like those choosing private schools, families choose home instruction for a wide variety of reasons. Some disagree with the political or religious values they perceive in the public school program. Some are strongly committed to a family-centered life and extended time with small children. Others believe they know best how to educate a particular child and will enroll all their children in school except for the one child believed to have unique education needs. Home-schoolers are more likely to keep younger children at home and send older children to school. Often parents "burn out," regardless of the age of their home-schooled child.

No one knows how many families teach their children at home. Many parents do not register their programs, often for fear that the programs will not be approved by state or local authorities. John Holt, an author and educator who assists families who choose home instruction estimates that about 10,000 families are trying home instruction in the United States today. Raymond Moore, a home school advocate, estimates the number at 50,000. Based upon interviews with only some of those who provide instructional materials for home schoolers, it appears that the higher estimates are more accurate. Table 7 provides the basis for this estimate. It suggests that there are at least 25,000 children of compulsory school age in the United States that are taught at home.

Regardless of the estimate used, the total number of families attempting home instruction is relatively small, and the overall growth of the movement is probably also relatively small. The oldest supplier of home-based curricular materials, Calvert School, reports little change in 50 years. The newer Christian-oriented suppliers are growing rapidly, but it seems likely that they are supplying some parents who once developed their own materials. Further, some of their materials may be used by schools, not by

TABLE 7

ESTIMATES OF HOME INSTRUCTION MATERIALS DISTRIBUTED ANNUALLY IN THE UNITED STATES

	Total	In U.S.	
		K-8	9-12
Accelerated Christion Education			
- Living Heritage Academy	2,000	1,240	410
- packets mailed to 5000 schools	?	?	?
- packets mailed to wholesalers	8,000	6,000	2,000
Alaska State Department of Education	766	438	243
Calvert School	4,000	2,666	
Christian Liberty Academy	13,500	10,125	3,375
Clonara School	1,000	750	250
Home Study International	3,050	945	1,800
High School Correspondence Schools	3,050		?
TOTAL		22,164+	8,078+

Sources

This table is based on a telephone poll of suppliers of home-based curricular materials. Accelerated Christian Education, creators of the Packet on Accelerated Christian Education (PACE), reports enrollment in its Living Heritage Academy at 2,000 for grades K-8. An estimated 350 of these are located outside the country; an estimated 25% are in grades 9-12. Finally, they also serve about 5,000 schools, some of which may offer home instruction. They distribute 8,000 PACE packets through five wholesale offices. Alaska enrolls children in its own program. Children are also in district-operated home study in Alaska, but data is not centrally available. Calvert School, in Baltimore, Maryland, dispatches 4,000 home instruction packets (grades K-8) each year; about one-third of these go overseas. The Christian Liberty Academy, in Prospect Heights, Illinois, reports 13,500 enrolled students, almost all of whom are in the United States. They estimate that less than 25% of the materials were for grades 9-12. The Clonara School in Ann Arbor, Michigan, helps parents develop an individualized curriculum. They enroll 450 families, or an estimated 1,000 children, in their home instruction program. An estimated 25% are in grades 9-12. Home Study International, affiliated with the Seventh Day Adventists, mailed out 1,050 K-8 curricular packets for students. About 10% went abroad. They have about 2,000 students in grades 9 through 12. Holt Associates, in Boston, Massachusetts lists 27 additional suppliers of home materials, but we found that they were small (less than 500), or treated the data confidentially. Some seem to have gone out of business, and could not be reached. Assuming that the above data represent half of the home schoolers, then it is likely that there are about 50,000 home-schooled children in the United States, in the compulsory age range (roughly, grades 1-8 or 9). More children may be considered "home schooled" if one includes students over age 15 or 16, many of whom use high school correspondence courses.

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parents. Many of the purchasers of Christian-based instruction can be expected to form schools as that movement develops further. The burden of home instruction is one that few parents can sustain for a long period.

What appears to be changing rapidly is the number of parents who are willing to become more open about their choice and who lobby for recognition for home instruction in states where it is not clearly allowed. Indeed, judging by the inquiries directed to staff at the Education Commission of the States, interest in home instruction is on the rise.

Many educators have expressed concern that children educated at home will fail academically and socially. The evidence does not support this concern. Parents typically think through their teaching methods. Many were former teachers. Some parents believe children should be self-directed and offer little or no supervision; others maintain a strict schedule. All in all, parents generally try to design home programs to meet the individual needs of their children. States such as Alaska and Arizona, which test home-schooled children, report that these children perform above average, as measured by nationally standardized tests. One study of children in a home tutorial network in Los Angeles showed that children in the network scored higher on standardized national tests than the children in Los Angeles public schools. But the children's test scores before they enrolled in the home program were unavailable, and children in the program were compared with all children in public schools rather than with children from the same socioeconomic backgrounds. It appears that the average home-schooled child does not fail by most academic standards. The concern should be, therefore, for those few who do, and should be tempered by the knowledge that more children are failing academically in public schools.

Home instruction and very small private schools raise additional issues of adequate resources and opportunities for socialization. However, in most cities, home schoolers find each other, through formal or informal associations, and offer each other mutual support. Institutionalized support is also available. The Alaska Department of Education provides extensive assistance, assigning teachers to supervise the work of home schoolers.

State Policies on Home Instruction

Tables 8 and 9 provide information on state policies and home instruction. These tables show that compulsory education laws in 38 jurisdictions expressly permit home instruction or require simply that children be educated in lieu of school attendance. Nonschool education obviously includes education at home, and it may include other options as well.

Seventeen states have no statutory provision for home instruction. In Illinois, the state supreme court has ruled that if a home qualifies as a school -- and the requirements for private schools in Illinois are very flexible — then attendance at that home school satisfies the state school attendance law. Following this decision, the Illinois Department of Education organized a supportive office for the home schools throughout the state. Michigan's attorney general has issued a similar ruling. But teachers in private schools in Michigan must have a teacher's certificate, which few parents have. State education agencies in a number of other states where statutes do not specifically

mention home instruction take a similar position. Courts in West Virginia and North Carolina have upheld state requirements that greatly restrict home instruction and may effectively prohibit it. In some states, such as Washington and Kansas, parents are actively lobbying for legal recognition of home schooling.

Table 9 provides detail on nonschool options for meeting the law's requirements. Nonschool instruction typically means home instruction. As can be seen, the typical law requires education, not school attendance. Instruction that is "equivalent" or "comparable" to public school instruction is an acceptable way to meet the compulsory education law's requirements in many states.

Vague terms such as "equivalency" usually invite legal problems, but to date, there have been no legal challenges to such wording. In contrast, two state supreme courts have declared compulsory education laws void for vagueness, for failure to define school (a much more specific term), where the law required "school attendance" as the only means of satisfying the law. Perhaps the more broadly worded laws have escaped challenge because states interpret them liberally, and do not use them to preclude home instruction or the operation of unaccredited private schools. A lower court in Maryland has held that "equivalent" instruction encompasses home instruction, and many state departments of education take the same view.

Four of the 38 states and territories that expressly allow nonschool instruction require that home teachers be certified. (Presumably a certificate is not necessary where state law is silent on the subject.) Some of the states that allow home instruction because the home qualifies as a school (e.g., Michigan) require teachers to have certificates. Arizona, Oregon, and some other states require that children educated at home be tested to provide assurance that they are progressing. Where certification or other restrictive requirements exist, parents often go "underground," that is, they operate home schools in violation of the law. Other parents have moved to more permissive states. In short, restrictive laws do not eliminate home instruction, they simply change where and how it is done.

A number of states require that state or local officials approve home programs. Some require that home programs cover the same subjects taught in the public schools. Many have some kind of "equivalency" or "comparability" requirement that is generally construed to mean that the same subjects must be taught. A fair number also specify the subject matter that must be taught, with reading, English or language arts mentioned most frequently.

Litigation Over Home Schools

Yoder, discussed above, has some relevance to home instruction. Indeed, the Amish children exempted from the schooling requirements in that case continued, in an informal way, their education in their communities. The Court in Yoder was careful to restrict the scope of its decision. The maturity of the children (after grade 8), the cohesiveness and history of the Amish, and their religious beliefs were all relevant.

Decisions outside this narrow realm have been mixed, with most cases turning on state constitutional or statutory grounds. In Perchemlides v. Frizzle (1978), a lower Massachusetts court has held that there is a right to home instruction. Legal scholars tend to agree, although they also agree that the state has the authority to set some rules for how it is accomplished.

On the other hand, in Duro v. District Attorney (1984), the U. S. Court of Appeals for the Fourth Circuit upheld North Carolina's prohibition of a home instruction program, despite religious objections of the parents. In the most recent case on the issue, Burrow v. State (Arkansas, 1984) a state supreme court found parents guilty of violating the compulsory schooling law. A similar result was reached in State v. Shaver (North Dakota, 1980), State v. Riddle (West Virginia, 1981), In re Sawyer (Kansas, 1983), and Jernigan v. State (Alabama, 1982) (Alabama has since adopted legislation expressly allowing home instruction).

The Arkansas and Kansas cases flatly rejected home instruction. In the others, one can conclude that the particular home instruction program before the court was not satisfactory, and that better-prepared parents might meet state requirements. The issue has never been definitively resolved by the Supreme Court, and the Court declined to review Duro, the most recent case to be appealed. Most equal scholars who have addressed the issue have concluded that there is some constitutional protection for those who seek to teach their children at home.

TABLE 8

STATE STATUTORY PROVISIONS REGULATING HOME INSTRUCTION

(See Also Table 4 for Requirements on Instructional Time)

	Is non-school instruction expressly permitted?	Where home instruction is permitted, is it part of basic requirement or exception?	Must teacher be certified?	Must program be approved?	Does statute specify curriculum?	Other requirements?
Alabama	yes	basic	yes	NP	yes, same as public schools	keep a register; make reports
Alaska	yes	exception	yes	yes, by local off.	NP	must show program meets needs of child
American Samoa	NP	NA	NA	NA	NA	
Arizona	yes	exception	no	yes, by county supt.	NP	testing of teacher and child
Arkansas	NP	NA	NA	NA	NA	
California	yes	exception	yes	NP	NP	instr. in English language; hours between 8 & 4
Colorado	yes	exception	not if a parent	yes, by state	NP	
Connecticut	yes	basic	NP	NP	must be equivalent	

TABLE 8 Continued

	Is non-school instruction expressly permitted?	Where home instruction is permitted, is it part of basic requirement or exception?	Must teacher be certified	Must program be approved?	Does statute specify curriculum?	Other requirements?
Delaware	yes	exception	NP	yes, by state	yes, same as public schools	
District of Columbia	yes	basic	NP	NP	yes, must be equivalent	
Florida	yes	basic	yes	NP, but A.G. op. gives local board approval responsibility	NP	must keep attendance and report data
Georgia	yes	basic	no	no	yes, reading lang. arts, math, soc. stud., sci.	registration; testing of child; annual progress report
Guam	yes	exception	NP	NP	yes, same as public schools	instruction in English
Hawaii	yes	exception	no	yes, by state	NP	
Idaho	yes	basic	yes	yes, by local board	yes, same as public schools	

TABLE 8 Continued

	Is non-school instruction expressly permitted?	Where home instruction is permitted, is it part of basic requirement or exception?	Must teacher be certified	Must program be approved?	Does statute specify curriculum?	Other requirements?
Illinois	NP, but court case permits it	NA	NA	NA	NA	
Indiana	yes	exception	NP	NP	NP	
Iowa	yes	basic	yes	yes, by state	yes, must be equivalent	
Kansas	NP	NA	NA	NA	NA	
Kentucky	NP*	*	*	*	*	
Louisiana	yes	basic	NP	yes, by state	NP	
Maine	yes	exception	NP; regs say no	yes, by state	NP (state regs. require English math, soc. studies and science)	
Maryland	yes	basic	NP	NP	NP	
Massachusetts	yes	exception	NP	yes, by local	NP	nonreligious corresp. schools must be licensed

TABLE 8 Continued

	Is non-school instruction expressly permitted?	Where home instruction is permitted, is it part of basic requirement or exception?	Must teacher be certified	Must program be approved?	Does statute specify curriculum?	Other requirements?
Michigan	NP, but A.G. op. & court cases allow it	NA	yes	NA	NP	
Minnesota	NP	NA	NA	NA	NA	
Mississippi	yes	exception	no	yes, by locals	yes, language arts & math	testing of all children after age 8
Missouri	yes	basic	NP	yes, by court	yes, must be equivalent; & incl. fed. & state const., Am. hist., & Am. inst's.	
Montana	yes	exception	NP	yes, by locals	yes, same as public	must notify county sup.; must be under local supervision
Nebraska	NP	NA	NA	NA	NA	
Nevada	yes	exception	NP	yes, by locals	NP	

TABLE 8 Continued

	Is non-school instruction expressly permitted?	Where home instruction is permitted, is it part of basic requirement or exception?	Must teacher be certified	Must program be approved?	Does statute specify curriculum?	Other requirements?
New Hampshire	NP, but state board regs allow it	NA	under regs, no	under regs, yes, by local board	NA Regs specify Eng., math, hist., gov., hygiene, & fed. & state const.	
New Jersey	yes	basic	NP	NP	NP	nonreligious corresp. schools must pay fee and be approved
New Mexico	No**		NP	NP		NP
New York	yes	basic	no	NP	yes, must be equivalent	
North Carolina	NP***	***	***	***	***	
North Dakota	NP	NA	NA	NA	NA	
Oklahoma	yes	basic	NP	NP	NP	
Oregon	yes	exception	NP	yes, by locals	courses usually taught in pub. school	testing of child by local officials

TABLE 8 Continued

	Is non-school instruction expressly permitted?	Where home instruction is permitted, is it part of basic requirement or exception?	Must teacher be certified	Must program be approved?	Does statute specify curriculum?	Other requirements?
Pennsylvania	yes	basic	no, but local dist. must approve it	yes, by locals	NP	
Puerto Rico	NP	NA	NA	NP	NA	
Rhode Island	yes	exception	NP	yes, by locals	yes, reading writing, geog., math, hist., R.I. hist. Am. gov.	
South Carolina	yes	basic	NP	yes, by state	must be equivalent	
South Dakota	yes	exception	no	yes, by locals	language arts, math	"competent" teachers; annual testing of child; limit of 22 students
Tennessee	NP	NA	NA	NA	NA	
Texas	NP	NA	NA	NA	NA	
Utah	yes	exception	NP	NP	NP	

TABLE 8 Continued

	Is non-school instruction expressly permitted?	Where home instruction is permitted, is it part of basic requirement or exception?	Must teacher be certified	Must program be approved?	Does statute specify curriculum?	Other requirements?
Vermont	yes	exception	NP	yes, by state	yes, reading writing, numbers, citizenship, hist., U.S. & Vt. gov. phys. ed., lit., nat. sci, health, tobacco, alcohol, drugs	no more than two students who do not live at the home school; report enrollment; annual renewal of approval
Virginia	yes	basic	yes	yes, by locals	NP	
Virgin Islands	yes	exception	NP	yes, by V.I.	NP	testing at option of V.I. Comm'r.
Washington	NP*	*	*	*	*	
West Virginia	yes	exception	no	yes, by locals	yes, same as public schools	correspondence schools must have state permit
Wisconsin	yes	exception	NP	no, but can obtain State super. approval on voluntary basis	yes, reading, lang. arts, math, soc. stud., sci. & health	curriculum must be sequential
Wyoming	NP	NA	NA	NA	NA	

TABLE 8 Continued

NOTES:

NP "NP" indicates no statutory provision. For teacher certification of parents, "NP" probably means "no".

NA "NA" indicates question is not applicable, because there is no statutory provision.

* State board staff say they will approve "home schools" if they meet state requirements for schools. Requirements for private schools vary by state.

** The definition of school excludes home instruction, the law requires school attendance.

*** Court case indicates it may be almost impossible to conduct legal home instruction in North Carolina.

TABLE 9

ACCEPTABLE NONSCHOOL OPTIONS TO MEET COMPULSORY EDUCATION LAWS

What forms of non-school instruction are specified by statute as acceptable compliance within the compulsory education law, either as meeting the basic requirements, or as an exemption? This table attempts to reflect the actual language of the statute that led the Law and Education Center to conclude that home instruction was allowed in state.

	No Provision	Instruction In the Home or by parent	Instruction by any person (parent, tutor or other)	Equivalent Instruction	Comparable Instruction	Correspondence Study	Other Key Phrase Describing Instruction
Alabama			x				
Alaska			x		x	x	
American Samoa	x						
Arizona		x	x				
Arkansas	x						
California			x				
Colorado		x	x				
Connecticut				x			
Delaware							Instruction in the subjects prescribed for public schools

TABLE 9 Continued

	No Provision	Instruction In the Home or by parent	Instruction by any person (parent, tutor or other)	Equivalent Instruction	Comparable Instruction	Correspondence Study	Other Key Phrase Describing Instruction
District of Columbia				x			
Florida		x	x				
Georgia		x	x				
Guam			x				
Hawaii			x				
Idaho					x		
Iowa			x	x			
Kansas	x						
Kentucky	x						
Louisiana		x					
Maine				x			
Maryland							Instruction in the studies usually taught in public schools
Massachusetts							Instructed in a manner approved in advance
Michigan	x	x[1]			[1]		

TABLE 9 Continued

	No Provision	Instruction In the Home or by parent	Instruction by any person (parent, tutor or other)	Equivalent Instruction	Comparable Instruction	Correspondence Study	Other Key Phrase Describing Instruction
Minnesota	x						
Mississippi		x	x				
Missouri		x		x			
Montana[2]		x				x	
Nebraska	x						
Nevada		x		x			
New Hampshire	x						
New Jersey				x			
New Mexico[3]	x						
New York				x			Attend at a public school or elsewhere
North Carolina	x						
North Dakota	x						
Ohio		x	x				
Oklahoma							Attend school unless other means of education are provided

TABLE 9 Continued

	No Provision	Instruction In the Home or by parent	Instruction by any person (parent, tutor or other)	Equivalent Instruction	Comparable Instruction	Correspondence Study	Other Key Phrase Describing Instruction
Oregon		x x					equivalent period; courses of study usually taught
Pennsylvania			x				
Puerto Rico	x						
Rhode Island							Instruction approved by the local board
South Carolina				x			
South Dakota			x				Provided with competent alternative instruction
Tennessee	x						
Texas	x						
Utah		x					
Vermont		x					
Virginia			x				
Virgin Islands		x					
Washington	x						

TABLE 9 Continued

	No Provision	Instruction In the Home or by parent	Instruction by any person (parent, tutor or other)	Equivalent Instruction	Comparable Instruction	Correspondence Study	Other Key Phrase Describing Instruction
West Virginia		x	x				Taught by persons "qualified" to give instruction in subjects required
Wisconsin		x					
Wyoming	x						

Source: Private Education Tables II(D), II(E)(2), II(E)(3), and IV.

1 Note that in Michigan and Illinois, case law, rather than statute, provides this response.

2 Note that the Montana provision is limited to students for whom transportation is not available.

POLITICAL CONSIDERATIONS

Changes in a state's compulsory education policies usually become controversial, especially when they affect private schools and home instruction. As one legislative leader expressed it, when her state determined expressly to allow home instruction, "Our fundamentalist population became very paranoid, just because we were looking at compulsory education laws, even though we had no intention of touching their schools."

Organizations and individuals urging more flexible compulsory education laws argue that flexibility is required to preserve the free exercise of religion. These groups argue that parents know what is best for the child. They include those participating in nontraditional choices, fundamentalist Christians, and more traditional private schools. Organizations and individuals concerned with civil liberties are likely to side with home schoolers, but have not yet taken up the cause of fundamentalist Christians. The national ACLU, for example, in its Policy #71A, states: "We believe that, in the interest of parental right to choose an alternative to public education, [home instruction with safeguards, such as approval of curriculum or testing of the child] . . . should be extended to all jurisdictions because the state's interest in assuring minimum levels of education does not extend to control of the means by which that interest is realized."

Organizations and individuals urging retention or adoption of stricter requirements for private education generally argue that these regulations are needed to assure the best interests of the child, and to prevent balkanization of society. These groups include teachers' organizations and public school administrators. Critics of deregulation most frequently cite lack of accountability.

In small districts superintendents and teachers also fear loss of state aid, which is usually based on number of pupils attending public schools. The exodus of just one or two children in a very small district has an impact; and administrators may fear that the movement will lead to formation of a new private school which would seriously impair the public school budget.

REDESIGNING A COMPULSORY EDUCATION LAW: EXAMPLES FROM SELECTED STATES

Redesigning compulsory education policies is not an easy task. A pragmatic approach would be to borrow language from a state that has adopted a policy similar to the one desired, and has implemented it with few problems. There is much variety among compulsory education policies. As a result, a state considering a change in its compulsory education policy can often look to sister states for models.

Tennessee, Vermont and Washington: Some states have imposed limits on the state board's regulatory power. Tennessee, for example, prohibits the state board and local boards from regulating faculties, textbooks, or curricula in church-affiliated schools. Vermont law indicates that the statute alone sets the rules, and the state board is not to expand upon it. Washington prevents state agencies from expanding on statutory provisions, but these provisions are relatively tough. They set minimum standards as to length of school year, length of day, subjects to be taught, and teacher qualifications. Teacher certification is required, except for courses in religion and other subjects not taught in the public schools. State law in Washington allows persons of "unusual competence" to teach, if they are supervised by certified teachers.

This approach recognizes the tendency of state boards to gradually increase regulation of private education over time, in response, perhaps, to an ideal of professionalism in education. Such an approach permits the legislature to keep compulsory education requirements at a minimum.

New Hampshire and Iowa: Where statutory requirements are flexible, imaginative administrative solutions to the issue become possible. In New Hampshire, for example, state administrative officials have reached a somewhat delicate agreement with fundamentalists that required information to be submitted on church stationery rather than on official state forms. This fulfills the state's need for certain information, but recognizes the fundamentalists' tenet that they should not submit to state regulatory systems. In Iowa, the state accepts reports from parents instead of the fundamentalist school. The fundamentalists involved felt individual reporting was no different than filing an income tax form, while a church report was tantamount to church submission to state regulation.

North Carolina and Nebraska: North Carolina and several other states have two levels of approval. North Carolina requires only that private schools keep records on pupil attendance and disease immunization and that they select and administer a nationally standardized test to students each year. The schools keep the tests on file and make them available to state inspectors. Schools also must meet fire, health, and safety standards established by other laws. However, if a private school wishes, it can seek state approval of its education program as well. Many do, because they believe state approval helps them attract students.

Nebraska followed this pattern most recently. Its new law allows exemption from the relatively strict regulatory scheme in that state if parents sign a

statement indicating a religious objection to state certification of teachers. It has alternative approval requirements for these schools. Teachers must be tested, and the state board may require testing of the children. It appears the board will require testing of children.

Alaska: Alaska not only allows home instruction on a liberal basis, but it provides extensive support services to families that request them. The state spends almost as much per pupil on children instructed at home, in the state home instruction program, as on it does on those in public schools. The state enrolls from around 800 to 900 (depending on the time of year) in its year-round home instruction program. A teacher, assigned to about 50 pupils, makes assignments, collects tests and papers and returns critiques to the child, all by mail. Other options include home instruction supported through a local district, rather than the state office, or independent instruction by parents. The state department does not have data on the numbers of children in district or parent-directed programs.

Although the Alaskan system developed in obvious response to the needs of children in remote areas, families within a reasonable distance to a school also take advantage of it. The home instruction option has proven especially beneficial to isolated Indians and Eskimos who would otherwise be required to be boarded away from home. Boarding a child away from home and community has often resulted in social withdrawal of the child and a high dropout rate. In addition to isolation in wintertime, families choose home instruction for religious reasons, social preferences (junior high students elect to avoid peer pressure), or work (high school students).

Arizona and Oregon: In both states, statutes expressly permit home instruction by a parent. Arizona requires the parent providing home instruction to be tested. Both states require periodic testing for the home-schooled child. There are some problems in both states, since requirements for private schools are even more permissive. To avoid testing, some families have argued that their home is a private school. The argument has been accepted (e.g. in Illinois and Michigan) where the statute does not provide for home schools. Where the statutes do provide for home schools, it seems most likely that courts will distinguish between home and private schools and accept differences in treatment between them. Care must be taken to define both, however, to avoid charges of vagueness that led courts to strike down compulsory education laws in Wisconsin and Georgia.

Another possible consideration: Oregon has delegated responsibility for testing to local school districts. Local districts set only pass/fail standards and are not required to report results to the state. The result seems to be that no one at the state level knows how many children are instructed at home, or whether tests are taking place, much less how the children are doing. In states with a strong tradition of local district automony, this may be appropriate. Other states may wish to have more information.

California and Florida: These states are among those that allow home instruction by a tutor who is certified by the state. While the statutes do not expressly indicate it, state boards generally require less preparation for certification of tutors than for teachers. But even here, parents, who are typically the tutors, do not always meet the requirements. Both states have

had parents teaching in violation of the requirement and have experienced some litigation on this issue.

Kansas and Washington: These states are in the minority, and representative of those states where the statutes make no provision for home instruction. Unlike Illinois and Michigan, they have no authoritative ruling recognizing home schools as "schools" for compulsory education purposes. Although the Washington Department of Education has said it will recognize home schools if they meet the requirements for private schools, most parents believe they must operate underground. Moreover, Washington is relatively tough on private schools, requiring, for example, teacher certification except in unusual cases. As a result of the restrictive policies in both states, some parents have gone underground, while others are openly lobbying for new laws. In December, 1981, the executive director of the Washington Association of Prosecuting Attorneys severely criticized the law: "It doesn't seem to be advancing the cause of justice particularly to prosecute parents who care enough about their kids' education that they're willing to pay for it - especially if the prosecutor has got a bunch of rapists, murderers and burglars he's trying to get." Several prosecutors said they would not prosecute such cases. Both states have special bodies studying the issue. Meanwhile, home instruction continues.

CONCLUSIONS

There are many ways a state can design its compulsory education law. Constitutional principles and practical considerations suggest that such laws should state only the minimum needed to produce a self-sufficient adult. This means as narrow as possible an age range, sanctions that are no more than necessary, and a wide variety of options outside the public school system.

Futher, the evidence suggests that the highest priority for enforcement efforts under these laws should be locating and educating the potential dropout and the child who has taken to the streets, not the child who is educated at home or in private schools, even when the education program fails to meet state standards. Children in these alternative education settings are relatively few in number and are, on the average, demonstrating skills that meet or surpass national norms. Testing and remediation might be made available to serve those children who nonetheless fail in these settings.

Many questions still need answers. This paper cannot deal with all the issues, but the following provides a list of additional considerations for policy makers as they adjust their compulsory education laws:

* Do existing consumer protection laws assure that parents are evaluating small nontraditional schools on the basis of adequate and correct information?

* How should a state deal with the practical implications of a relatively large exodus from public schools in a local school district that is dependent on state aid based on enrollment or attendance? Is there a need to provide short-term assistance to such a district?

* Should enforcement of these laws be left to local law enforcement agencies? — local education officials? -- state education officials? Who can best identify truants and offer the services needed to solve the problem of truancy?

* Does the state have adequate data on children instructed outside the public school system? Are these children acquiring what they need for good citizenship and self-sufficiency? If not, what should be the state's responsibility to these children?

* Are children instructed at home or in very small religious schools really insulated from the mainstream of society or do they have adequate opportunities for gaining social skills and a broader knowledge of society? If social isolation is a problem, what are the best ways to correct it? To what extent should states provide support to home-schoolers?

* If local officials provide support, should states permit them to count home-tutored children in their enrollment figures?

APPENDIX

SUGGESTED LEGISLATION: A COMPULSORY EDUCATION LAW

1. Education Requirements.

The parent or guardian shall provide for the education of a child from age 7 through 15, by pursuing any of the following options:

(a) Enrollment in public school;

(b) Enrollment in a private school meeting the requirements specified in section 2(b) of this act;

(c) Instruction by the child's parent or guardian, provided that the program is submitted to the superintendent [or other designated local official] of the school district where the child resides, and he or she has found that the subject matter includes the subjects specified in section 3 of this chapter; or

(d) Instruction by a parent or other tutor who meets minimum requirements established by the state board of education. Minimum requirements for certification of tutors shall not exceed four years of postsecondary study. A demonstration of competency shall be accepted in lieu of formal education attainments. The tutor shall comply with requirements for private school officials in sections 2(b), 7 and 8, of this chapter.

2. Reporting Requirements.

(a) Public school officials shall keep records of name, age, address and number of children enrolled in public school, and daily attendance.

(b) Private school officials shall keep records of the names, ages, addresses, and number of children enrolled in their program, attendance for each child, and a brief statement of the curriculum to be followed for each child or grade.

(c) Parents or guardians who teach their children at home must make the following reports to local school officials of the school district in which the child resides: (i) at the start of the school term the names, ages and number of children to be taught, and a brief statement of the curriculum to be followed; (ii) during the school year, any change in status within 10 school days of the change; (iii) at the close of the year, or earlier if requested, a brief report of attendance, showing actual days of instruction and a summary of the year's instruction, if instruction deviated from the curriculum outlined at the start of the year.

3. Instruction for compulsory education purposes must occur at least 900 instructional hours per year, and include (1) basic communication skills including reading and writing; (2) use of numbers; (3) citizenship, history and government of the state and the United States; (4) physical education; (5) English, American and other literature; and (6) the natural sciences. Public school instruction shall include principles of health, including the effects of tobacco, alcohol and drugs, provided that families who have a religious or conscientious objection to in-school instruction for their child in these subjects shall be allowed to obtain excusal from the requirements for their child. Parents who seek such excusal shall be encouraged to have the child instructed in the subject at home or by other means.

4. Testing requirements. All children shall take a nationally standardized test at the end of the 1st, 3rd, 6th, and 9th grade. Public school officials shall administer the test to all children residing in the district, at a public school site, and shall prescribe a remedial course for children who fail to demonstrate minimum competency for their age. Remediation for children not enrolled in public schools may be ensured through attendance at public schools, or through evidence of remedial services elsewhere. In no case shall children not enrolled in public school be required to take remedial courses not required of children enrolled in public schools. Local school officials for each district shall be responsible for selection of the test, and shall provide for at least two test options where parents or representatives from private schools object to first selection. Parents shall receive a copy of the assessment for their child within 20 days of testing.

5. (a) Any parent, guardian, or other person having control or charge of any pupil who, after notice and an opportunity for counseling, continue to fail to comply with the provisions of this chapter is guilty of an infraction, and shall be punished as follows:

(1) Upon a first conviction, by a fine of not more than one hundred dollars ($100).

(2) Upon second and each subsequent conviction, by a fine of not more than two hundred fifty dollars ($250).

(3) In lieu of imposing the fines prescribed in subparagraphs (1) and (2), the court may order such person to be placed in a parent education and counseling program.

(b) A judgment that a person convicted of an infraction be punished as prescribed in subdivision (a) may also provide for the payment of the fine within a specified time or in specified installments, or for participation in the program noted in 5(a)(3) above. A judgment granting a defendant time to pay the fine or prescribing the days of attendance in a program shall order that if the defendant fails to pay the fine, or any installment thereof, on the date that it is due, or fails to attend a program on a prescribed date, he or she shall appear in court on that date for further proceedings. Willful violation of the order is punishable as contempt.

6. Local school districts shall provide counseling to families with children who are truant, and shall establish alternative education programs for children who are habitually truant, and who have not improved attendance patterns after counseling and other efforts have failed.

7. Public and private school officials shall provide the state department of education with data collected under sections 2 and 4, as requested. The state department shall make no more than four such requests per year from private school officials.

8. Public and private school officials shall notify the state department of education and local law enforcement agencies if any child enrolled in the school is absent for more than 10 school days without excuse.

COMMENTS ON THE RECOMMENDED LANGUAGE

Whatever language is chosen for a statute, it is preferable to keep it short, clear and simple. The above draft was prepared with this in mind. Parents, teachers and other nonlawyers may be using the law as a guide, and it should be clear to them. For the same reason, extensive cross-references and delegation to agencies of very basic policy (such as curriculum requirements) should be avoided.

Section 1 sets out the basic rules. It provides several education options, allowing for flexibilty in meeting the needs of individual families. The options make it very clear that home instruction is legitimate. (Some states require the child to attend school or be otherwise educated, leaving a question, perhaps, in the minds of those who do not know the case law, regulations or practice, about the status of home instruction.) Expressly providing for home instruction should also encourage cooperation between the parents engaged in home instruction and public school officials, and keep avenues of support, information and communication open.

The section provides two options for parents seeking to undertake a program of home instruction. The parent may either register with local school officials, or may obtain state approval of their qualifications to teach, and comply with record-keeping rules applied to private schools. This gives parents an option if local officials are hostile to home instruction, because of the potential loss of state aid. The state criteria for home-school teaching may be more than some parents can meet. Nonetheless, state monitoring and assistance is more remote, and the additional requirements seem warranted. A home teacher who is not a parent or guardian must meet the state requirements. Once a person other than the parent or guardian is employed as a teacher, the concern for the privacy of the family relationship is diminished.

The choice of ages 7 through 15 as the age for compulsory education is based upon the modal state response, coupled with the fact that these policy choices appear to cause few problems.

Section 2 provides for reporting requirements and curriculum. If a state allows home instruction, these requirements probably should be very similar to requirements for in-school instruction, unless education officals are prepared to monitor home schools and private schools and enforce different rules. For each to have separate rules inevitably raises questions about what is a school. Another choice would be to adopt fewer restrictions on instruction by a parent of his or her own child. There should be little confusion over what is in-school instruction and instruction by a parent. (Otherwise some schools may try to escape stricter private school requirements by declaring themselves home programs.)

Section 3 contains curriculum requirements. The curriculum requirements for all private options should be kept simple, to avoid constitutional problems. Many states require "equivalent" instruction, but then a parent must discover what public schools are doing. Some state laws allow state or local boards to add to the requirements. But the simplest approach is to keep minimum requirements in the compulsory statute, and provide elsewhere for an expanded public school curriculum and board authority to add to the public school curriculum. The

requirements in section 3 are derived from Vermont's law. The draft section clearly states these requirements so that the reader is not obliged to consult another section of the statutes or board regulations. Vermont and a number of other states also require education in the effects of substance abuse. This requirement is restricted to public schools in the suggested language, because a large number of private schools consider it a value-laden area. Many other subjects might also be required of public school students, following the model. However, it is recommended that some provision for excusal be included where the subject is value laden, or where the individual maturity of the child is an important factor.

The school year and school day requirement is kept low and flexible, to allow private and home schools to make choices different from those made for public schools. The hours are low, at 5 hours per day for 180 days. This actually reflects the typical 6 hour day, which includes between-class time. It could be further reduced for home instruction, if legislators determined that one-to-one home instruction provides more time on task.

Section 4 includes an option for states that wish to test the children. Testing requirements are not recommended, but if it seems desirable to a state, then the author recommends that they apply the rules evenly to all children, with remediation as the goal if children fail.

In section 4 the requirement applies evenly to all children, including private school children. This is not a constitutional requirement; it is recommended only because it seems fair. This also avoids the difficulties arising when only home-instructed children are tested, tempting some parents to avoid the requirement by declaring their home a school. Many states may decide to test only home-schoolers, preferring to face the administrative task of sorting out home schools from other schools, and avoiding the expense of testing of all nonpublic school students. There is probably no constitutional problem with this choice, but, given what is known about achievement of home-schoolers generally, it is unclear why this group should be tested and not others.

To enhance the remedial value of the testing program, the grades chosen should probably be those that will permit timely remediation. Early grades are best. The end of 1st, 2nd and/or 3rd grade would help identify children in need of special help before it is too late. After this, there are certain benchmarks - the last year of elementary school, and the last year of middle school. The year prior to high school graduation should be included if the state requires a student to pass a competency test as a condition to graduation.

While church-state problems have arisen because of state testing programs for private school children, the type of program outlined here avoids them. Thus, the option suggests universal testing for all children, including those in public and private schools, at a public school site. Sectarian schools would not have direct access to the data. It is possible that some parents would turn the data over to a private school, but that choice belongs to the parents. It is unlikely that courts will see such state-supported testing programs as assisting or promoting religion in any way. They are no more an aid to parochial schools than are public library and park services.

Section 5 provides for sanctions. It is based on California's law, which provides

for fines only, and which provides for counseling as a sanction in appropriate cases. The suggested language also requires notice and counseling prior to court action, something not required in the California statute. This reflects a concern that nonjudicial remedies be attempted first. Under the suggested language, a parent cannot be found guilty unless this first occurs. The notice defines the offense. In states that do not have a notice requirement, the fine should be stated in terms of a dollar amount per day, and should be much lower. The choice of only civil penalties, along with counseling, is based upon an assessment of practical concerns. Prosecutors often refuse to prosecute in all but the worst cases of truancy. Counseling seems more to the point than immediate sanctions. Section 6 requires local districts to make an alternative education program available to the habitually truant child when all other enforcement efforts fail.

As shown in Table 3 a large number of states provide for lower fines (which may be appropriate), and two states have no sanctions. These seem to be appropriate choices as much as the fine suggested above. However, the higher fine was used because the rules for nonpublic education are flexible in the above language. As inappropriate as it seems to punish parents who are doing what they believe is in the best interests of the child, liberalization of rules on private schools and home instruction will more directly resolve this issue. Fines - and ultimately contempt of court charges - will be a weapon to use against only the truly negligent parent.

Sections 2 and 4 make local school officials responsible for receiving and reviewing the curriculum for the home-schooled child, and for the testing program, in deference to the widespread preference for keeping sensitive education decisions as close to the people affected as possible. There is, however, an option for parents educating their own child to go to the state and follow alternative procedures.

Section 7 allows state officials to obtain the data whenever they feel a need to review it. It does not automatically require reporting, as state officials could be overloaded with data they do not need. Section 8 requires reporting of truancy after 10 days. Reporting of lesser infractions is optional, leaving it to the discretion of school officials to determine whether informal couseling might be more effective in some cases. The suggested language is written in a way to permit nonjudicial remedies wherever possible.

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State v. Riddle, 295 S.E.2d 359 (W. Va. 1981).

State v. Shaver, 294 N.W.2d 883 (N.D. 1980).

Wisconsin v. Yoder, 406 U.S. 205 (1972).

APPENDIX

CITATIONS TO STATE STATUTES REQUIRING COMPULSORY SCHOOL ATTENDANCE OR COMPULSORY EDUCATION

ALABAMA
Ala. Code secs. 16-28-1 through 16-28-24 (1975 & Supp. 1984).

ALASKA
Alaska Stat. secs. 14.30.010 through 14.30.050 (1982).

AMERICAN SAMOA
Am. Samoa Code Ann. secs. 16.0302 through 16.0308 (1983).

ARIZONA
Ariz. Rev. Stat. Ann. sec. 15-801 (Supp. 1984).

ARKANSAS
Ark. Stat. Ann. secs. 80-1501 through 80-1516 (1980 & Supp. 1983).

CALIFORNIA
Cal. Educ. Code secs. 48200 through 48342 (West 1978 & Supp. 1985).

COLORADO
Colo. Rev. Stat. secs. 22-33-101 through 22-33-109 (1973 & Supp. 1982).

CONNECTICUT
Conn. Gen. Stat. Ann. secs. 10-184 through 10-201 (West 1980 & Supp. 1983).

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DISTRICT OF COLUMBIA
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FLORIDA
Fla. Stat. Ann. secs. 232.01 through 232.277 (West 1977 & Supp. 1984).

GEORGIA
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GUAM
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HAWAII
Hawaii Rev. Stat. secs. 298-1 through 298-16 (1976 and Supp. 1982).

IDAHO
Idaho Code secs. 33-201 through 33-208 (1982 and Supp. 1984).

ILLINOIS
Ill. Ann. Stat. ch. 122, secs. 26-1 through 26-12 (Smith-Hurd 1980 and Supp. 1984).

INDIANA
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IOWA
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LOUISIANA
La. Rev. Stat. Ann. secs. 17:221 through 17:226 (West 1982 & Supp. 1985).

MAINE
Me. Rev. Stat. Ann. tit. 20-A, secs. 5001 through 5053 (1983 & Supp. 1984).

MARYLAND
Md. Educ. Code Ann. secs. 7-301 through 7-303 (1985 and Supp. 1984).

MASSACHUSETTS
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MICHIGAN
Mich. Comp. Laws Ann. secs. 380.1561 through 380.1599 (1980 & West Supp. 1984).

MINNESOTA
Minn. Stat. secs. 120.05 through 120.15 (West 1983 & Supp. 1985).

MISSISSIPPI
Miss. Code Ann. secs. 37-13-91 through 37-13-105 (1983 & Supp. 1982).

MISSOURI
Mo. Ann. Stat. secs. 167.011 through 167.191 (Vernon 1974 & Supp. 1985).

MONTANA
Mont. Code Ann. secs. 20-5-101 through 20-5-108 (1983).

NEBRASKA
Neb. Rev. Stat. secs. 79-201 through 79-216 (1982), as amended by L.B. 928 and L.B. 994, both signed into law on April 10, 1984.

NEVADA
Nev. Rev. Stat. secs. 392.040 through 392.150 (1981).

NEW HAMPSHIRE
N.H. Rev. Stat. Ann. secs. 193:1 through 193:7 (1978).

NEW JERSEY
N.J. Stat. Ann. secs. 18A:38-25 through 18A:38-31 (West 1974 & Supp. 1984).

NEW MEXICO
N.M. Stat. Ann. secs. 22-12-1 through 22-12-7 (1978 & Supp. 1984), and N.M. Const. art. XII, sec. 31.

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N.Y. Educ. Law secs. 3201 through 3234 (McKinney 1981 & Supp. 1984).

NORTH CAROLINA
N.C. Gen. Stat. secs. 115C-378 through 115C-385 (1983).

NORTH DAKOTA
N.D. Cent. Code secs. 15-34.1-01 through 15-34.1-05 (1981 & Supp. 1983).

OHIO
Ohio Rev. Code Ann. secs. 3321.01 through 3321.99 (Page 1980 & Supp. 1983).

OKLAHOMA
Okla. Stat. Ann. tit. 70, secs. 10-101 through 10-108 (West 1975 & Supp. 1984).

OREGON
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PENNSYLVANIA
Pa. Stat. Ann. Tit. 24, secs. 13-1326 through 13-1357 (Purdon 1974 & Supp. 1984).

PUERTO RICO
P.R. Laws Ann. tit. 18, secs. 71 through 81 (1974 & Supp. 1983).

RHODE ISLAND
R.I. Gen. Laws secs. 16-19-1 through 16-19-9 (1982 & Supp. 1980).

SOUTH CAROLINA
S.C. Code secs. 59-65-10 through 59-65-90 (1976 & Supp. 1984).

SOUTH DAKOTA
S.D. Codified Laws Ann. secs. 13-27-1 through 13-27-28 (1982 & Supp. 1984).

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Tenn. Code Ann. secs. 49-1701 through 49-1777 (1983 & Supp. 1984).

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UTAH
Utah Code Ann. secs. 53-24-1 through 53-24-9 (1981 & Supp. 1983).

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VIRGIN ISLANDS
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WYOMING
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